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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MATTHEW SCOTT, an Individual by	)	Case No. 16-03084-BRO-RAO
and through his Guardian Ad Litem,	)	[Hon. Beverly R. O'Connell]
MARY RODGERS-VEY, and OMAR	)	
MOJICA, an Individual by and	)	THIRD AMENDED CLASS
through his Guardian Ad Litem,	)	ACTION COMPLAINT FOR
ADRIAN MOJICA, on behalf of	)	DECLARATORY AND
themselves and all others similarly	)	INJUNCTIVE RELIEF AND
situated,	)	DAMAGES
	)	
Plaintiffs,	)	DEMAND FOR JURY TRIAL
	)	
vs.	)	

CALIFORNIA FORENSIC
MEDICAL GROUP; TAYLOR
FITHIAN, an Official as Director of
California Forensic Medical Group, in
his individual capacity; PAUL
ADLER, M.D., an Official as Director
of California Forensic Medical Group,
in his individual capacity; RONALD
POLLACK, M.D., an Official of
California Forensic Medical Group, in
his individual capacity; PAM AHLIN,
an Official as Director of California
Department of State Hospitals, in her
official and individual capacities;
HARRY OREOL, an Official as
Director of Patton State Hospital, in
his official and individual capacities;
MHM SERVICES OF CALIFORNIA,
INC.; MARCUS LOPEZ, an Official
as Director of MHM Services of
California, Inc., in his individual
capacity; and DOES 1 through 10,
inclusive,

Defendants.

I. INTRODUCTION

1. This is a complaint for declaratory and injunctive relief and damages by Plaintiffs, on behalf of themselves and those similarly situated, arising under 42 U.S.C. §1983, 42 U.S.C. §12132 *et seq.*, 29 U.S.C. §794 *et seq.*, California Civil Code §51 *et seq.*, California Civil Code §54 *et seq.*, and similar state laws. Plaintiffs seek redress for deprivation of their rights, privileges and immunities,

1 secured by the Fourth and Fourteenth Amendments to the United States
2 Constitution.

3 2. Under California law, Defendant California Department of State Hospitals
4 (“DSH”) and its designees are charged with evaluating, placing and providing
5 restorative treatment to individuals found incompetent to stand trial. (“ISTs”)
6 Prior to their placement in a specified DSH facility for restorative treatment, ISTs
7 are entitled to receive constitutional and statutorily mandated care and treatment
8 for their mental health condition. If their competency is restored, their criminal
9 cases may be adjudicated. If their competency is not restored, the criminal charges
10 may be dismissed without prejudice to the initiation of a conservatorship
11 proceeding. During the evaluation and restoration periods, speedy trial rights are
12 automatically waived, and the criminal proceedings are stayed. Unfortunately,
13 ISTs are not provided with necessary care and treatment prior to the initiation of
14 restorative treatment. Furthermore, the evaluation and placement process is unduly
15 lengthy and stays of criminal proceedings often last for months even before
16 restorative treatment begins. As a result, individuals with mental health disabilities
17 have languished in jail for weeks and months without appropriate mental health
18 treatment while awaiting restorative treatment. These individuals often end up
19 spending more time in jail prior to adjudication than they would if they had
20 pleaded guilty. More importantly, the delays have caused individuals with mental
21 health disabilities to suffer needless deterioration in their mental health as they sit
22 in jail, frequently in prolonged isolation, for weeks and months without
23 constitutionally adequate mental health treatment as they await placement in a
24 facility licensed to provide restorative treatment.

25 3. The defendants in this action intentionally discriminate against and denied
26 ISTs their Constitutional and statutory rights as follows:
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- 1 A. ISTs are held in county custody in violation of the California and Federal
2 Constitution and state statutes for indefinite and prolonged periods of times
3 without restorative mental health care, or even basic mental health treatment,
4 solely due to their IST condition;
- 5 B. ISTs are discriminated against compared to non-IST inmates in housing as
6 they are held in isolation and not general population solely due to their IST
7 and/or mental health condition;
- 8 C. ISTs are discriminated against compared to non-IST inmates in conditions of
9 confinement as they are often punished solely due to their IST and/or mental
10 health condition;
- 11 D. ISTs are discriminated against as compared to non-IST inmates as they do
12 not get the same day room time, roof time, visiting, phone call privileges,
13 commissary, time outside of their cells working in the jail or going to
14 recreation in general population day rooms or on the roof of the jail, solely
15 due to their IST and/or mental health condition;
- 16 E. ISTs are discriminated against compared to non-IST inmates as they serve
17 longer sentences and lose statutory pre-trial custody credits as they languish
18 indefinitely in their conditions of confinement, and,
- 19 F. ISTs are denied meaningful access to the Courts due to their indefinite and
20 prolonged custody without mental health care, which in turn denies them
21 their speedy trial rights under the California constitution, and denies them
22 equal statutory pre-trial custody credits for good behavior and for working in
23 the jail. (See ¶81 *infra*.)
- 24 G. ISTs are discriminated against compared to non-mentally ill inmates as they
25 are not provided with adequate mental health treatment by CFMG
26 Defendants.
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1 4. Non-IST inmates are housed in general population, are not punished due to
2 their mental conditions, and do not lose commissary, visits and phone calls due to
3 their mental conditions. They are not deprived of mental health care treatment.
4 They do not lose pre-trial custody credits and serve additional time due to their
5 non-IST condition. (See ¶81, *infra*) The defendants, despite their awareness of the
6 disparate conditions, treatment and length of sentences, act with reckless disregard
7 for, and deliberate indifference to, the IST inmates' conditions of confinement and
8 do nothing to remedy their situation. They act with reckless disregard for, and
9 deliberate indifference to, the IST inmates' federal and state constitutional rights,
10 and state statutory rights. They have been aware of these conditions for years and
11 done nothing to remedy the situation, either by ensuring that the Ventura County
12 Jail does not discriminate against IST inmates while they await transfer for
13 restorative mental health care treatment, ensuring that they receive adequate mental
14 health treatment pending transfer to a state IST facility, or ensuring that they are
15 transferred immediately to a State Hospital for restorative mental health treatment.

16 **II. JURISDICTION AND VENUE**

17 5. This action is brought pursuant to 42 U.S.C. §1983 and 42 U.S.C. §12131, *et*
18 *seq.*

19 6. This Court has jurisdiction over the subject matter of this action pursuant to
20 28 U.S.C. §1331 (federal question jurisdiction), 28 U.S.C. §1343 (civil rights
21 jurisdiction) and 28 U.S.C. §1367 (supplemental jurisdiction).

22 7. Venue in the United States District Court, Central District of California, is
23 based upon 28 U.S.C. §1391(a) (2) in that a substantial part of the events giving
24 rise to the claims occurred in this district.

25 **III. PARTIES**

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A. PLAINTIFF REPRESENTATIVES

8. Mary Rodgers-Vey is the mother and guardian ad litem of Plaintiff MATTHEW SCOTT ("SCOTT"). SCOTT has been diagnosed with mental illness, and is a person with a disability defined in 42 U.S.C. §12102. SCOTT requires mental health treatment and accommodations to alleviate his symptoms and to function in jail. SCOTT was arrested on August 22, 2015, on suspicion of a felony violation of first degree residential burglary. He was booked into the Ventura County Jail the same day. On August 24, 2015, the Ventura County District Attorney filed a complaint alleging a single felony count of residential burglary as well as several allegations that he had suffered a prior conviction for a serious felony and had not remained free of prison custody for five years following his release on parole. Bail was set at \$175,000 and he was remanded to the custody of the Sheriff. On August 25, 2015, SCOTT was arraigned in Ventura Superior Court. He waived arraignment and entered a plea of not guilty.

9. On November 5, 2015, SCOTT's attorney declared doubt as to his competency to stand trial pursuant to Penal Code §1368. Criminal proceedings were suspended and civil proceedings were instituted. That same day, Dr. Katherine Emerick, Ph.D., Forensic Psychologist, was ordered to perform a competency evaluation. Dr. Emerick found SCOTT to be incompetent to stand trial and filed a report with the court. On November 30, 2015, SCOTT was formally found to be incompetent to stand trial by the Ventura County Superior Court. The court made a finding that SCOTT consented to the administration of psychotropic medications and referred the case to MHM Services of California, Inc. ("MHM Services"), for a placement recommendation.

10. On December 14, 2015, the court held a hearing on placement. A letter from MHM Services was filed and the court ordered placement at any state hospital. The court found that the maximum commitment time was 3 years and

1 awarded custody credit of 0 actual days and 0 days of Penal Code §4019 additional
2 credit for a total of 0 days of custody credit. SCOTT was committed to the DSH
3 pursuant to Penal Code §1368. SCOTT was remanded to the custody of the sheriff
4 and the sheriff was ordered to transport him to Patton State Hospital (“Patton”).
5 On December 24, 2015, the 1370 Packet was sent to the transportation unit of the
6 VCSO. On or about April 28, 2016, SCOTT was transported to Patton for
7 treatment, 151 days after being found IST and 136 days after he was ordered to be
8 transported to Patton.

9 11. During his incarceration, SCOTT was disciplined numerous times for a
10 variety of violations of jail rules. Most of his violations and subsequent discipline
11 arose because of his mental illness. For example, SCOTT believed that he was
12 being attacked by the devil in his cell. Because he believed that the devil had
13 somehow changed a part of his plastic armband to metal, he tore it off. He was
14 also in an altercation with another inmate whom SCOTT perceived as “acting
15 weird.” Additionally, he was disciplined for throwing feces against the wall of his
16 cell after he ran out of toilet paper and was not brought another roll by the guards
17 after several requests. His discipline included loss of commissary, loss of visits,
18 and isolation in a safety cell.

19 12. Adrian Mojica is the brother and guardian ad litem of OMAR MOJICA
20 (“MOJICA”). MOJICA has been diagnosed with mental illness, and is a person
21 with a disability defined in 42 U.S.C. §12102. MOJICA requires mental health
22 treatment and accommodations to alleviate his symptoms and to function in jail.
23 MOJICA was arrested on April 8, 2014, on suspicion of a felony violation of
24 attempted robbery. He was booked into the Ventura County Jail the same day. On
25 April 10, 2014, the Ventura County District Attorney filed a complaint alleging a
26 single felony count of attempted robbery, as well as several allegations that he had
27 suffered a prior conviction for a serious felony, and that he personally used a
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1 weapon during the commission of the crime. Bail was set at \$110,000, and he was
2 remanded to the custody of the Sheriff. On May 7, 2014, MOJICA was arraigned
3 in Ventura Superior Court and entered a plea of not guilty. MOJICA's attorney
4 declared a doubt as to his competency to stand trial pursuant to Penal Code §1368.
5 Criminal proceedings were suspended and civil proceedings were instituted. That
6 same day, Dr. John Nightingale, Ph.D., Clinical Psychologist, was ordered to
7 perform a competency evaluation. On September 10, 2014, after numerous
8 continuances, a second doctor, Dr. Ines Monguio, Clinical Psychologist, filed a
9 report with the court finding MOJICA incompetent to stand trial. The case was
10 continued to September 24, 2014, and referred for a placement recommendation.

11 13. On September 26, 2014, the court made a finding that MOJICA consented
12 to the administration of psychotropic medications and ordered placement in Patton
13 State Hospital. The court found that the maximum commitment time was 3 years
14 and awarded custody credit of 172 actual days and 172 days of Penal Code §4019
15 additional credit, for a total of 344 days of custody credit. MOJICA was
16 committed to the DSH pursuant to Penal Code §1368, and the sheriff was ordered
17 to transport him to Patton State Hospital. On December 23, 2015, a notice of
18 admission to DSH was filed. On March 30, 2015, DSH sent the court a certificate
19 of mental competency. On April 10, MOJICA returned to court. The case was
20 continued to April 17, 2015, and criminal proceedings resumed on that date.

21 14. MOJICA entered a plea of not guilty. A preliminary hearing was held on
22 May 11, 2015, and MOJICA was held to answer the charges and remained in
23 custody with bail set at \$110,000. After several continuances, MOJICA's attorney
24 requested that he receive mental health treatment, pursuant to Penal Code §4011.6.
25 The request was denied. On August 14, 2015, MOJICA entered a plea of not guilty
26 by reason of insanity, and two psychiatrists were appointed to evaluate him. On
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1 October 13, 2015, Penal Code §1026 (not guilty by reason of insanity) evaluations
2 were received from both doctors.

3 15. On November 25, 2015, MOJICA's attorney declared a doubt as to his
4 mental competence. Criminal proceedings were suspended, civil proceedings were
5 instituted, and Dr. Thomas Lauren was appointed to examine MOJICA. On
6 December 24, 2015, it appears that the court found MOJICA incompetent to stand
7 trial and continued the case to January 6, 2016 for a hearing on placement. On
8 January 6, 2016, a placement recommendation was received from MHM Services
9 and the court committed MOJICA to DSH pursuant to Penal Code §1368.

10 MOJICA was remanded to the custody of the sheriff, and the court ordered the
11 sheriff to transport him to Patton State Hospital. The court made a finding that the
12 maximum term was 3 years, and awarded custody credit for 521 actual days, 0
13 days of Penal Code §4019 credit, for a total of 521 days of custody credit. On
14 January 28, 2016, the 1370 Packet for Patton State Hospital was sent to the
15 transportation unit of the VCSO.

16 16. During his incarceration, MOJICA has been disciplined several times for a
17 variety of violations of the jail rules. Most of his violations and subsequent
18 discipline arose because of his mental illness. For example, MOJICA describes
19 "hearing voices," and one of the strongest voices is his former Catholic priest.
20 MOJICA becomes agitated when he hears these voices and was in an altercation
21 with another inmate early on in his incarceration after hearing the voices. He was
22 also disciplined for "hoarding" pills which he did not want to take. His discipline
23 included 5 days in an isolation cell, commonly referred to as "the hole," loss of
24 visits, commissary, and a disciplinary diet. Thereafter, MOJICA was housed alone
25 and locked down 23 hours a day. On May 19, 2016, MOJICA was transported to
26 Patton for treatment, 148 days after being found IST and 135 days after he was
27 ordered to be transported to Patton.

B. FACTS RELATING TO OTHER IST DETAINEES

17. Plaintiffs have identified several cases pending in California state courts which challenge the unduly lengthy delays caused by the failure of DSH to accept IST detainees for treatment after they have been found IST and ordered transferred from a county jail to DSH for competency restoration services. For example, in both 2016 and 2017, the Ventura County Public Defender has filed a series of orders to show cause why DSH should not be held in contempt for failing to comply with the Ventura County Superior Court's Commitment Order and Order to Transport IST detainees in a timely manner, e.g. *People v. Tafolla*, Ventura County Superior Court Case no. 2015038403. In *Tafolla*, DSH filed responsive pleadings and supporting declarations. In several other pending cases, including *People v McKean*, Ventura County Superior Case no. 2016036960, DSH has submitted declarations and an evidentiary hearing on an order show cause why DSH should not be held in contempt is scheduled for tomorrow, March 28, 2017. Similarly, the Contra Costa County Public Defender, after receiving a favorable ruling from the Court of Appeal in *In re Loveton* (2016) 244 Cal.App.4th 1025, moved the court to issue an order show cause why DSH should not be held in contempt for continuing to fail to comply with the 60-day time limit for transfer which the court had previously ordered and the Court of Appeal approved in *In re Loveton*. See *People v. Keegan Czirban, et. al.* Contra Costa County Superior Court Case no. 2-32161, (*Czirban*).

18. In these actions, DSH revealed in declarations and sworn testimony several details relevant to the statewide problem of failing to provide timely restorative treatment in general and some statistics relevant to the provision of IST detainees in Ventura County in particular. A DSH document entitled "Pending Admission Analysis for April 18, 2016" disclosed as an exhibit to a responsive declaration from a DSH official, revealed that, as of that date, there were 445 1ST defendants

1 on the admissions waiting list statewide. The report also contains summary and
2 detailed information by gender, hospital, and committing county and an “Average
3 Number of Days on List by County and Hospital chart” which indicates the
4 average number of days for pending patients from a specific county as of the date
5 of the report. For Ventura County, as of the date of the report, 20 IST detainees
6 were awaiting transport. The range of time since the date of commitment for these
7 20 detainees was 28 days at the low end and 147 at the high end.

8 19. A similar exhibit entitled “Weekly Pending Placement Reports” prepared
9 by DSH for the month of September 2016, provides the weekly number of pending
10 IST placements, along with other forensic and civil commitment types. These
11 reports also provide comparisons to statewide data on pending placements as of
12 July 1, 2015, July 1, 2015, and July 1, 2016. With respect to the statewide
13 numbers, the weekly Pending Placement Report dated September 5, 2016 revealed
14 371 pending placements for ISTs as of July 1, 2014, 340 pending placements for
15 ISTs as of July 1, 2015, and 464 pending placements for ISTs on July 1, 2016.
16 With respect to IST detainees from Ventura in particular, this document revealed
17 that between 12 and 13 ISTs awaiting transport each week during the month of
18 September, 2016.

19 20. On January 20, 2017, Dr. Mark Grabau, PhD, the Chief Psychologist with
20 the Forensic Services Division of DHS testified in an evidentiary hearing in *People*
21 *v. Keegan Czirban, et. al.*, Contra Costa County Superior Court Case No. 2-32161,
22 (*Czirban*). Dr. Grabau testified that he oversees the statewide operations of the
23 CONREP program for DHS and the recently implemented statewide Jail Based
24 Competency Treatment (JBCT) program for DSH. He testified that DSH employs
25 independent contractors to administer the CONREP program and also designates
26 various county agencies to administer the program and that DSH pays for the cost
27 of the outpatient treatment provided to IST detainees. He identified a 16-bed
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1 facility in Fresno which opened on January 3, 2017 which could be used for
2 outpatient treatment. As of the date of his testimony, January 20, 2017, he
3 revealed that either 28 or 29 IST detainees statewide were receiving outpatient
4 treatment. Approximately 14 of the detainees were from San Joaquin County.
5 One was from Contra Costa County. He confirmed that the CONREP designee in
6 each County could recommend placement in either outpatient treatment in
7 CONREP or in the new JBCT program. Note that the CONREP designee for
8 Ventura County is Defendant MHM.

9 21. The First IST detainee from Ventura County to receive outpatient treatment
10 in CONREP was Brian McKenney on February 17, 2017. As of today, Plaintiffs
11 are aware of no IST detainees from Ventura who have been referred to the JBCT.

12 22. Plaintiffs have identified a number of other ISTs whose factual
13 circumstances raise common questions of fact and law. As of the date of the filing
14 of the first amended complaint on July 28, 2016, most IST detainees had been
15 transported to Patton State Hospital.

16 23. Stephanie Swofford was booked into the Ventura County Jail on October 6,
17 2015. She was found incompetent to stand trial on November 10, 2015. The
18 Ventura County Superior Court ordered her transferred to Patton on December 15,
19 2015. Her "1370 Packet," was sent to the Ventura County Sheriff's Office
20 Transportation Unit on December 16, 2015. She was transported to Patton State
21 Hospital on or about May 23, 2016, 196 days after she was found IST and 161
22 days after she was ordered to be transported to Patton.

23 24. Timothy Cundieff was booked into Ventura County Jail on September 10,
24 2015. He was found incompetent to stand trial on December 22, 2015. The
25 Ventura County Superior Court ordered him transferred to Patton on January 11,
26 2016. His 1370 Packet was sent to the Ventura County Sheriff's Office
27 Transportation Unit on January 21, 2016. He was transported to Patton State
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1 Hospital on or about May 12, 2016, 143 days after he was found IST and 123 days
2 after he was ordered to be transported to Patton.

3 25. Robert Ortega was booked into Ventura County Jail on September 2, 2015.
4 He was found incompetent to stand trial on December 4, 2015. Ventura County
5 Superior Court ordered him transferred to Patton on December 11, 2015. His 1370
6 Packet was sent to the Ventura County Sheriff's Office Transportation Unit on
7 December 24, 2015. He was transported to Patton State Hospital on or about May
8 19, 2016, 168 days after he was found IST and 161 days after he was ordered to be
9 transported to Patton.

10 26. Terrill Berntson was booked into Ventura County Jail on September 11,
11 2015. He was found incompetent to stand trial on December 3, 2015. Ventura
12 County Superior Court ordered him transferred to Patton on December 17, 2015.
13 His 1370 Packet was sent to Ventura County Sheriff's Office Transportation Unit
14 on December 24, 2015. He was transported to Patton State Hospital on or about
15 May 12, 2016, 162 days after he was found IST and 148 days after he was ordered
16 transported to Patton.

17 27. Spencer Neminski was booked into Ventura County Jail on August 5, 2015.
18 He was found incompetent to stand trial on September 30, 2015. Ventura County
19 Superior Court ordered him transferred to Patton on February 16, 2015. His 1370
20 Packet was sent to Ventura County Sheriff's Office Transportation Unit on
21 February 16, 2016. He was transported to Patton State Hospital on or about May
22 19, 2016, 233 days after he was found IST and 94 days after he was ordered to be
23 transported to Patton.

24 28. Additional recent IST detainees identified were transported to Patton after
25 several months and the lengths of their incarceration prior to their transportation to
26 Patton are set forth below in order to provide concrete examples of the length of
27 pre-treatment delay experienced by members of the Class.

1 29. Dominic Diaz was booked into Ventura County Jail on July 14, 2015. He
2 was found incompetent to stand trial on October 19, 2015. Ventura County
3 Superior Court ordered him transferred to Patton on November 4, 2015. His 1370
4 Packet was sent to Ventura County Sheriff's Office Transportation Unit on
5 November 17, 2015. He was transported to Patton State Hospital on or about
6 February 18, 2016, 122 days after he was found IST and 107 days after he was
7 ordered transported to Patton.

8 30. Mark Crockett booked into Ventura County Jail on September 13, 2015. He
9 was found incompetent to stand trial on October 21, 2015. Ventura County
10 Superior Court ordered him transferred to Patton on November 17, 2015. His 1370
11 Packet was sent to the Ventura County Sheriff's Office Transportation Unit on
12 November 25, 2015. He was transported to Patton State Hospital on or about
13 March 3, 2016, 134 days after he was found IST and 108 days after he was ordered
14 transported to Patton.

15 31. James Siler booked into Ventura County Jail on July 23, 2015. He was
16 found incompetent to stand trial on October 28, 2015. Ventura County Superior
17 Court ordered him transferred to Patton on November 24, 2015. His 1370 Packet
18 was sent to Ventura County Sheriff's Office Transportation Unit on December 7,
19 2015. He was transported to Patton State Hospital on or about February 25, 2016,
20 121 days after he was found IST and 94 days after he was ordered transported to
21 Patton. It is also noteworthy that Mr. Siler was severely beaten by a fellow inmate
22 in the jail while he awaited transfer to Patton.

23 32. Robert Morton was booked into Ventura County Jail on September 25,
24 2015. He was found incompetent to stand trial on October 29, 2015. Ventura
25 County Superior Court ordered him transferred to Patton on November 30, 2015.
26 His 1370 Packet was sent to Ventura County Sheriff's Office Transportation Unit
27 on December 8, 2015. He was transported to Patton State Hospital on or about
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1 March 18, 2016, 141 days after he was found IST and 109 days after he was
2 ordered transported to Patton.

3 33. Brian McKenney was booked into Ventura County Jail on August 13, 2016.
4 He was found incompetent to stand trial on November 17, 2016. Ventura County
5 Superior Court ordered him transferred to Atascadero State Hospital on December
6 9, 2016. His "1370 Packet," was sent to Ventura County Sheriff's Transportation
7 Unit on December 21, 2016. While in custody waiting to be transferred, he was
8 severely beaten by another inmate. On February 14, 2017, the transfer order to
9 Atascadero was vacated. On February 17, 2017, he was ordered released for
10 outpatient restorative treatment at CONREP, an outpatient facility operated by
11 MHM Services of California, Inc. ("MHM"). The Director of MHM Services is
12 Marcus Lopez and, although outpatient services can be recommended for IST
13 inmates, Plaintiffs are informed and believe putative class member McKenney is
14 the first Ventura County IST detainee being held on felony charges placed in an
15 outpatient facility by MHM and the California Department of State Hospitals.
16 McKenney was released for outpatient restorative treatment at CONREP on or
17 about February 20, 2017, 97 days after he was found IST and 75 days after he was
18 ordered transferred to Atascadero. State Defendants and MHM have always had
19 the option of recommending outpatient restorative treatment for IST detainees
20 accused of felonies throughout the class period. For the very first time that
21 Plaintiffs are aware of, outpatient restorative treatment was recommended, and the
22 court ordered it for an IST detainee accused of a felony. It is also noteworthy that
23 Dr. Grabau testified that 28 or 29 ISTs were receiving outpatient treatment on
24 January 20, 2017. (See ¶20, *supra*)
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26 34. Jayden Sunder was booked into Ventura County Jail on March 18, 2016.
27 He was found incompetent to stand trial on September 23, 2016. Ventura County
28

1 Superior Court ordered him transferred to Atascadero State Hospital on November
2 10, 2016. His "1370 Packet," was sent to Ventura County Sheriff's Transportation
3 Unit on December 8, 2016. On or about February 22, 2017, he was released from
4 jail and presumably was transferred to Atascadero, 152 days since he was found
5 IST, and 104 days since he was ordered transferred to Atascadero.

6 35. Daniel Webster was booked into Ventura County Jail on August 23, 2016.
7 He was found incompetent to stand trial on November 16, 2016. Ventura County
8 Superior Court ordered him transferred to Atascadero State Hospital on December
9 7, 2016. His "1370 Packet," was sent to Ventura County Sheriff's Transportation
10 Unit on December 16, 2016. As of February 22, 2017, he has waited in custody
11 for 98 days since he was found IST, and 77 days since he was ordered transferred
12 to Atascadero.

13 36. Arturo Valtierra was booked into Ventura County Jail on April 26, 2016. He
14 was found incompetent to stand trial on November 7, 2016. Ventura County
15 Superior Court ordered him transferred to Atascadero State Hospital on November
16 28, 2016. His "1370 Packet," was sent to Ventura County Sheriff's Transportation
17 Unit on December 21, 2016. On or about February 22, 2017, he was released from
18 jail and presumably was transferred to Atascadero, 107 days since he was found
19 IST, and 86 days since he was ordered transferred to Atascadero.

20 37. In conformance with this Court's latest ruling requiring Plaintiffs to name
21 the class representatives and putative class members referred to in our pleadings,
22 information obtained from Ventura County Superior Court's public minute orders
23 is set forth below in a chart which summarizes the number of days each IST
24 detainee languished in custody before being placed in a State Hospital, Patton or
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Atascadero,¹ or in the case of Brian McKenney to CONREP, from the date of the IST finding by the Superior Court. Column 1 represents the number of days the IST detainee was held after the transport order and column 2 represents the number of days the IST detainee was held from the date after the 1370 packet is sent to the State hospital.

NAME / VENTURA COUNTY CASE NO.	Days After IST Finding	Days After Transport Order	Days After 1370 Packet Sent
Omar Mojica / 2015031109	147	134	112
Matthew Scott / 2015026800	149	135	125
Dominic Diaz / 2015022047	122	106	93
Stephanie Swofford / 2015031789	195	160	159
Mark Crockett / 2015029308	134	107	99
Terrill Berntson / 2015029405	161	147	140
Omar Mojica / 2015031109	147	134	112
Robert Morton / 2015030797	141	109	101
Robert Ortega / 2015023998	167	160	147
Timothy Cundieff / 2015028904	142	122	112
Keith Chambers / 2015031852	107	107	98
James Siler / 2015023540	120	93	80

¹ It appears some IST detainees, since the filing of the lawsuit, have been placed at Atascadero State Hospital.

1	Enrique Davalos / 2015031763	160	34	23
2	Christine Thomas / 2015026544	183	110	98
3	Bonifasio Tafolla / 2015038403	118	104	98
4	Anthony Parish / 2013005294	101	80	70
5	Dalila Medina / 2016011482	111	90	UNK.
6	Spencer Neminski / 2015025085	232	93	93
7	April Swan / 2016004093	139	76	67
8	Annette Magallon / 2015011813	171	128	57
9	Monica Turnbull / 2015040456	121	100	UNK.
10	Joseph Siquiedo / 2016002109	56	23	UNK.
11	Genaro Ramirez / 2016000848	94	73	70
12	Tucker Moore / 2015029503	134	22	20
13	Rustin Stewart / 2015018950	120	106	104
14	Everard Douglas / 2015016360	118	99	97
15	Case Crone / 2013027968	97	83	79
16	Arturo Fernandez / 2015023867	101	54	53
17	Michael Marquez / 2015038380	96	45	10
18	Jacob Hooper / 2015040867	126	105	95
19	Ben Kallas / 2015038518	138	123	112

Rodney Holder / 2014028235	119	115	112
Arturo Valtierra / 2016016724	107	86	63
Jayden Sunder / 2016012302	152	104	76
Daniel Johnson II / 2014025449	107	86	85
Brian McKenney / 2016030003	95	73	61

38. The IST detainees identified in the above chart were transported an average of 131 days after being found IST, 98 days after the transport order, and 89 days after the 1370 packet was sent. The range of values for the above IST detainees from the date of being found IST until they were transported is 56 at the low end and 232 at the high end. The range of values for the above IST detainees from the date of the transport order until they were transported is 23 at the low end and 160 at the high end. The range of values for the above IST detainees from the date that the 1370 Packet was sent to transportation, until they were transported, is 10 at the low end and 159 at the high end.

C. CFMG DEFENDANTS

39. Defendant California Forensic Medical Group, Inc. (“CFMG”), its agents, deputies, employees, and independent contractors, at all times mentioned herein was and is an agent of the County of Ventura, and Ventura County Sheriff’s Office (“VCSO”) and Sheriff Dean, and was and is under contract with Ventura County, VCSO and Sheriff Dean for the purpose of providing medical care and treatment on behalf of Ventura County, VCSO and Sheriff Dean to civil detainees, pre-trial detainees, and sentenced inmates under the care and control of defendants Ventura County. At all times mentioned herein, CFMG and its agents and employees were

1 acting under color of law and under the direction and agency of Ventura County,
2 VCSO and Sheriff Dean to provide such care and treatment to civil detainees, pre-
3 trial detainees, and sentenced inmates. CFMG operates a medical unit inside the
4 Ventura County Pre-Trial Detention Facility ("VCPTDF"), which houses its
5 administrative offices including professional offices, clinics, including treatment
6 rooms such as safety cells and examination rooms, inside the jail. As such, CFMG
7 occupies, controls and operates an actual physical place in the VCPTDF, and
8 public accommodation inside the jail to provide medical and mental health
9 treatment. Plaintiff is informed and believe Defendants CFMG, and its agents
10 Defendants Paul Adler and Ronald Pollack have offices inside the VCPTDF.

11 40. Defendant Taylor Fithian, M.D. ("Fithian"), at all times mentioned herein,
12 was and is an employee and/or agent of Ventura County and VCSO, Sheriff Dean
13 and CFMG, acting under color of law, who was and is the Medical Director of
14 CFMG and the physician responsible for establishing policies and practices for
15 CFMG employees and was and is responsible for training, supervision and
16 management of CFMG employees including doctors, nurses, and nurse
17 practitioners at VCPTDF, concerning the provision of medical and mental health
18 treatment to civil detainees including IST detainees, pre-trial detainees, and
19 sentenced inmates at VCPTDF. Defendant Fithian is being sued in his individual
20 capacity for damages.

21 41. Defendant Paul Adler, M.D. ("Adler"), at all times mentioned herein, was
22 and is an employee and/or agent of Ventura County and VCSO, Sheriff Dean and
23 CFMG, acting under color of law, who was and is the On-site Medical Director of
24 CFMG at the VCPTDF and the physician hired to provide medical care, attention,
25 and treatment to civil detainees, pre-trial detainees including IST detainees, and
26 sentenced inmates at VCPTDF. He was and is the physician responsible for the
27 hiring, training, supervision and management of subordinate medical staff
28

1 providers, including doctors, nurses, and nurse practitioners at VCPTDF.

2 Defendant Adler is being sued in his individual capacity for damages.

3 42. Defendant Ronald Pollack, M.D. ("Pollack"), at all times mentioned herein,
4 was and is an employee and/or agent of Ventura County and VCSO, Sheriff Dean
5 and CFMG, acting under color of law, who was and is a psychiatrist at VCPTDF
6 and a physician hired to provide mental health treatment civil detainees, pre-trial
7 detainees, and sentenced inmates at VCPTDF. Defendant Pollack was and is
8 responsible for implementing all CFMG policies and practices governing the
9 provision of mental health treatment for all civil detainees including IST detainees,
10 pre-trial detainees and sentenced inmates at VCPTDF. He was responsible for the
11 supervision and management of subordinate medical staff providers providing
12 mental health treatment to detainees and inmates at VCPTDF. Defendant Pollack
13 is being sued in his individual capacity for damages.

14 **D. STATE DEFENDANTS**

15 43. The California Department of State Hospitals ("DSH") is the state agency
16 in the state of California designated to administer and supervise the administration
17 of competency evaluation and restoration treatment pursuant to Penal Code §1367
18 *et seq.* (involuntary forensic commitment). As such, DSH utilizes federal and state
19 funds in operating services in a way that ensures compliance with state and federal
20 constitutional and statutory protections for people involuntarily detained in order to
21 receive mental health services.

22 44. Although IST detainees are regularly sent to Patton from VCPTDF, there
23 are six other DSH mental health treatment facilities in California which potentially
24 could house Ventura County IST detainees if there are no beds available at Patton:
25 DSH-Atascadero, DSH-Coalinga, DSH-Metropolitan LA, DSH-Napa, DSH-
26 Sacramento, DSH-Salinas Valley, DSH-Stockton and DSH-Vacaville.
27 Furthermore, IST detainees can also receive competency restoration services at
28

1 certain jail facilities in San Bernardino and Sacramento and can also receive
2 outpatient restorative treatment through CONREP. Additionally, Dr. Mark Grabau,
3 Ph.D, the Chief Psychologist with the Forensic Division of DSH testified on
4 January 20, 2017, that the Haskins Residential Facility is also available as an
5 alternative to placement at a state hospital.

6 45. Defendant Pam Ahlin ("Ahlin") is the Director of DSH. She is sued under
7 in her official capacity for injunctive relief only and for damages in her personal
8 capacity under all causes of action alleged against her. Defendant Ahlin is
9 ultimately responsible for the administration of all of the DSH facilities in the state
10 including Patton State Hospital. Defendant Ahlin has been personally involved in
11 the decision making concerning Patton's one-in, one-out policy that has caused
12 unconstitutional delays in the provision of mental health and restorative mental
13 health treatment to IST inmates from Ventura County. She has also acted with
14 deliberate indifference to the unconstitutional delays in treatment, because she is
15 personally involved, and/or acquiesced, in the policy and practices of DSH which
16 resulted in the unconstitutional delays. A California Legislative Analyst Report,
17 "An Alternative Approach: Treating the Incompetent to Stand Trial," dated
18 January 3, 2012 shows that the DSH and Director Ahlin funded a pilot program
19 with the County of San Bernardino in which IST inmates are treated in the County
20 jail rather than going to Patton, thereby reducing the long waitlists for state
21 hospital beds and shortening the time to restore defendants to competency. The
22 report establishes that Defendant Ahlin can implement policies curtailing the
23 unconstitutional delays in the treatment IST detainees and has acted with deliberate
24 indifference to Ventura County detainees. A City News Group article, dated
25 August 31, 2015, also makes clear that Defendant Ahlin, and Defendant Harry
26 Oreol, the Director of Patton, are well aware of the unconstitutional delay in
27

1 treatment, and have ignored the problem in Ventura County in deliberate
2 indifference to Plaintiffs' rights.

3 46. Patton State Hospital ("Patton") is a state psychiatric hospital that is
4 charged with serving the needs of California individuals with pending criminal
5 proceedings who are ordered to receive competency restoration services. Pursuant
6 to statute, Patton may house "no more than 1,336 patients." Welfare and
7 Institutions Code §4107(c). However, according to their website located at
8 <http://www.dsh.ca.gov/Patton>, Patton operates 1,527 beds, 36% of which are used
9 for treatment of IST detainees. This equates to approximately 550 beds total for
10 IST detainees.

11 47. Defendant Harry Oreol ("Oreol") is the Executive Director of Patton. He is
12 sued under in his official capacity for injunctive relief only and for damages in his
13 personal capacity under all causes of action alleged against him. As Executive
14 Director, Defendant Oreol is responsible for oversight, operation, and management
15 of Patton and competency restoration services for individuals with mental health
16 disabilities in pending criminal proceedings. Defendant Oreol knows or should
17 know that incarcerated IST detainees who are ordered to be placed at Patton will
18 not receive appropriate mental health treatment in the jail for months while
19 Patton's "one in, one out" policy slowly grinds forward. He has been personally
20 involved in implementing and is responsible for, or has personally acquiesced, in
21 the one-in, one out policy that has resulted in the unconstitutional deprivation of
22 IST detainees rights who have been unreasonably denied timely mental health
23 treatment and restorative treatment in violation of their constitutional rights.

24 48. Defendant MHM Services of California, Inc., ("MHM Services") is a private
25 corporation whose parent company, MHM Services, Inc., is headquartered in
26 Vienna, Virginia. The State of California and DSH entered into a contract with
27 MHM Services in 2014 to provide mental health services in Ventura County
28

1 including the operation of the CONREP or Forensic Conditional Release Program.
2 On information and belief, DSH has also delegated to MHM Services the task of
3 conducting placement recommendations for IST detainees housed in the Ventura
4 County jails. Delays in issuing these "placement recommendations" have
5 contributed to the indefinite and prolonged delays faced by IST detainees in
6 Ventura County and MHM Services has failed to recommend placement in the
7 CONREP program which it operates for IST detainees despite the knowledge that
8 IST detainees face indefinite and prolonged delays in receiving adequate mental
9 health treatment when they are referred to DSH facilities and spend months on the
10 waiting list. Defendant MHM and Defendant Marcus Lopez have discretion under
11 state guidelines to place IST detainees in CONREP out-patient restorative
12 treatment programs, which would reduce the delay in placement and the provision
13 of constitutionally required timely restorative mental health treatment. It would
14 reduce the delay by lowering the number of placements to DSH facilities. Despite
15 the authority to make such placements and with knowledge of the unconstitutional
16 delays, MHM routinely makes DSH placement recommendations which result in
17 unconstitutional delays in treatment. Plaintiffs are informed and believe despite its
18 authority to make out patient recommendations and placements, it is aware of only
19 one placement by MHM and Lopez to CONREP, putative class member
20 McKenney on February 17, 2017. As of today, Plaintiff is aware of no IST
21 detainees from Ventura who have been referred to the JBCT. Defendant MHM is
22 sued for injunctive relief and damages under all causes of action alleged against
23 MHM.

24 49. Defendant Marcus Lopez ("Lopez") is the CONREP Community Program
25 Director of MHM Services of California, Inc. As the Community Program
26 Director, Defendant Lopez is responsible for oversight, operation, and
27 management of MHM Services' provision of mental health services in Ventura
28

1 County including the operation of the Forensic Conditional Release Program or
2 "CONREP". Defendant Lopez signs most of the IST placement recommendations
3 for DHS and the overwhelming majority of the recommendations are for placement
4 in Patton. Defendant Lopez knows or should know that incarcerated IST detainees
5 who are ordered to be placed at Patton will not receive appropriate mental health
6 treatment in in the jail for months while Patton's "one in, one out" policy slowly
7 grinds forward.

8 50. Defendant Marcus Lopez has discretion under state guidelines to place IST
9 detainees in CONREP out-patient restorative treatment programs, which Defendant
10 Lopez himself oversees as the Community Program Director for MHM Services,
11 which administers the CONREP program pursuant to a contract with DSH.
12 Referral to MHM Services' outpatient restorative treatment program would reduce
13 the delay in placement and the provision of constitutionally required timely
14 restorative mental health treatment. It would reduce the delay by lowering the
15 number of placements to DSH facilities. Despite the authority to make such
16 placements and with knowledge of the unconstitutional delays, Lopez routinely
17 recommends IST detainees be treated at Patton or simply refers the detainee for
18 treatment at DSH. These recommended placements foreseeably result in
19 unconstitutional delays in treatment. Plaintiffs are informed and believe despite its
20 authority to make out patient recommendations and placements, it is aware of only
21 one placement by Lopez to CONREP, putative class member McKenney on
22 February 17, 2017. As of today, Plaintiff is aware of no IST detainees from
23 Ventura who have been referred to the JBCT. Defendant Lopez is sued for
24 injunctive relief and damages.

25 **E. DOE DEFENDANTS**

26 51. The true names and capacities, whether individual, corporate, associate, or
27 otherwise, of Defendants sued herein as Does 1 through 10, inclusive, are unknown
28

1 to Plaintiffs, who therefore sues said Defendants by such fictitious names.
2 Plaintiffs will amend this complaint to show such true names and capacities when
3 they have ascertained the same. Plaintiffs are informed, believe and thereupon
4 allege that each Doe Defendant named herein is, in some manner, legally
5 responsible for the acts complained of. Does 1 through 10 are CFMG, DSH, and
6 MHM Services employees and/or agents who have not yet been identified,
7 including but not limited to, executive, management, and/or policy-making staff
8 and employees, and medical and mental health professionals.

9 52. At all times herein mentioned Defendants, and each of them, were the
10 agents, servants and employees of each of the Co-Defendants, and in doing the
11 things herein mentioned were acting within the purpose, course and scope of their
12 authorities and employment as such agents, servants and employees, and with the
13 permission and consent of said Co-Defendants.

14 **IV. FACTS ENTITLING PLAINTIFFS AND CLASS MEMBERS TO**
15 **RELIEF**

16 **a. Defendants' Duty to Provide Adequate Mental Health Care and**
17 **Restorative Treatment.**

18 53. Penal Code §1367 et seq. governs procedures for evaluation and restoration
19 of competency. Under California law, a person accused of a crime cannot be tried
20 or punished while that person is mentally incompetent. (Penal Code §1367(a)). A
21 court may find a defendant is mentally incompetent if, as a result of mental
22 disorder, the defendant is unable to understand the nature of the criminal
23 proceedings or to assist counsel in the conduct of a defense in a rational manner.
24 If, during the pendency of an action a doubt arises in the mind of the judge as to
25 the mental competence of the defendant, the court shall order a hearing into the
26 mental competence of the defendant. (Penal Code §1368(a)).
27
28

1 54. When an order for a hearing has been issued, all proceedings in the criminal
2 prosecution are suspended. (Penal Code §1368(c)). The court then appoints a
3 licensed psychologist or psychiatrist to examine the defendant.

4 When an order for a hearing has been issued, all proceedings in the criminal
5 prosecution are suspended. (Penal Code §1368(c)). The court then appoints a
6 licensed psychologist or psychiatrist to examine the defendant.

7 55. After proceedings in the criminal prosecution are suspended, Penal Code
8 §1369 requires that “**While the person is confined pursuant to order of the**
9 **court under this section, he or she shall be provided with necessary care and**
10 **treatment.**” (Penal Code §1369(a), emphasis added). Thus, **under the state**
11 **statutory scheme, IST detainees are entitled to receive “necessary care and**
12 **treatment” during the whole period they are confined after criminal**
13 **proceedings are suspended, including before being transferred to a state IST**
14 **treatment facility.** While, as is discussed *infra*, restorative treatment is supposed
15 to occur at state authorized facilities, the obligation to provide necessary, and
16 constitutionally adequate treatment exists during the whole period of confinement,
17 rather than only after placement in a state authorized facility occurs.

18 56. More fundamentally for this lawsuit, Plaintiffs’ Section 1983 claim is not
19 reliant on duties or responsibilities as they are allocated under California law.
20 Rather, **the fundamental basis of Plaintiffs’ Section 1983 claim is that any**
21 **government agency that is confining a person clearly known to require mental**
22 **health treatment, specifically including ISTs, is constitutionally required to**
23 **provide adequate mental health treatment.** The failure to do so, where the
24 agency is on notice of the need for such treatment, constitutes deliberate
25 indifference to, and reckless disregard for, the constitutional rights of the affected
26 inmate. Regardless of the California statutory scheme, and how it allocates
27 responsibilities, it does not have the constitutional authority to remove the

1 constitutional obligations of the entity that is actually holding the affected inmate.
2 IST detainees are entitled to receive constitutionally mandated treatment that meets
3 the constitutional minimum for their mental disabilities while they await placement
4 by DSH for restorative treatment.

5 57. The failure to timely provide mental treatment and restorative mental
6 treatment, discriminates against inmates under the ADA, the Rehabilitation Act as
7 the actions by Defendants have a disparate impact on Plaintiff Ventura County IST
8 detainees, , the Bane Act, 52.1 as their IST status is a disability, and the
9 Defendants discriminated against them in comparison to non-IST inmates by
10 intentional discrimination and their actions having a disparate impact on them by
11 denying them equal access to the Courts, denying them equal statutory pre-trial
12 custody credits (See ¶81, *infra*), denying them reasonably timely mental health and
13 restorative mental health care, punishing them due to their IST status, denying
14 them equal conditions of confinement by housing them in isolation, and denying
15 them commissary, jail visits and phone calls generally available to inmates. All of
16 this conduct was on account of Plaintiffs' disabilities.

17 58. If the state court determines that a defendant is IST, all proceedings in the
18 criminal prosecution are suspended and civil proceedings are instituted until the
19 defendant regains mental competence or a finding is made that the detainee is
20 unlikely to regain competence. (Penal Code §§1370(a)(1)(B), 1370.01(a)(1)).
21 Such a finding triggers a process designed to evaluate, treat and restore the
22 defendant's mental health so that judicial proceedings may resume. On
23 information and belief, such a finding also suspends their entitlement to statutory
24 pre-trial custody credits against their sentences. (See ¶81, *infra*)

25 59. After the court makes a formal finding that the defendant is IST, Penal
26 Code §1370(a)(2)(A) mandates that, within 15 judicial days, "A person shall not be
27 admitted to a state hospital or other treatment facility or placed on outpatient status
28

1 without having been evaluated,” and further requires the community program
2 director or designee, (Defendants MHM and Marcus Lopez in this case), to:

3 A. Evaluate the defendant and submit a written recommendation as to
4 whether the defendant should be required to undergo outpatient treatment, or
5 committed to any other treatment facility; and

6 B. Evaluate the appropriate placement between DSH, a county jail
7 treatment facility, or the community based residential treatment system based upon
8 guidelines submitted by DSH. (Penal Code §1370(a)(2)(A)).

9 60. Once the IST finding is made by the court in a felony case, “the court shall
10 order that the mentally incompetent defendant be delivered by the sheriff to a state
11 hospital for the care and treatment of the mentally disordered, as directed by the
12 State Department of State Hospitals, or to any other available public or private
13 treatment facility, **including a county jail treatment facility or the community-**
14 **based residential treatment system [...]** if the facility has a secured perimeter
15 **or a locked and controlled treatment facility, approved by the community**
16 **program director that will promote the defendant's speedy restoration to**
17 **mental competence, or placed on outpatient status as specified in Penal Code**
18 **§1600.” (Penal Code §1370(a)(1)(B)(i), emphasis added).**

19 61. If a defendant is charged with a felony and determined to be IST, he or she
20 may be held for treatment for a maximum of three years from the date of
21 commitment or for a period equal to the maximum term of imprisonment for the
22 most serious charge, whichever is shorter. (Penal Code §1370(c)(1)). If the person
23 never regains competence, the criminal charges may be dismissed, and under
24 certain circumstances, the person may become the subject of a conservatorship.

25 62. Prior to admission, DSH is required to evaluate each IST patient “to
26 determine the placement of the patient to the appropriate state hospital.” (Cal.
27 Welf & Inst. Code §7228). DSH utilizes the 1370 packet to evaluate an IST
28

1 patient for security risks, and thereby determine whether to place an IST patient in
2 low-security DSH facilities, such as DSH-Napa and DSH- Metropolitan or in the
3 “most secure facilities” such as DSH-Atascadero or DSH-Patton.” (Cal. Welf &
4 Inst. Code §§7225, 7228, and 7230).

5 63. If the facility is a locked and controlled treatment facility or has a secured
6 perimeter, MHM may approve placement in a:

7 A. Public Treatment Facility - California law allows a county jail to be
8 designated as a “treatment facility,” upon concurrence of the Board of Supervisors,
9 the county mental health director, and the county sheriff, but provides that the
10 maximum amount of time that a defendant may be “treated” in a designated county
11 jail is six months. Penal Code §1369.1(a); or a

12 B. Private Treatment Facility; or the

13 C. Community Based Residential Treatment System, i.e., CONREP.

14 64. Once the IST finding is made by the court in a misdemeanor case, the
15 defendant shall be delivered by the sheriff to an available public or private
16 treatment facility approved by the county mental health director that will promote
17 the defendant's speedy restoration to mental competence, or placed on outpatient
18 status. (Penal Code §1370.01(a)(1)).

19 65. If a defendant is charged with a misdemeanor and determined to be IST, he
20 or she may held one year from the date of commitment or a period of commitment
21 equal to the maximum term of imprisonment provided by law for the most serious
22 offense charged in the misdemeanor complaint, whichever is shorter. (Penal Code
23 §1370.01(c)(1)). If the person never regains competence, the criminal charges may
24 be dismissed, and under certain circumstances, the person may become the subject
25 of a conservatorship.

26 66. After the court receives the placement recommendation and makes an order
27 committing the IST for treatment, DSH or any other treatment provider is required
28

1 to submit a progress report within 90 days concerning the defendant's progress
2 towards recovery of mental competence and the likelihood that the defendant will
3 regain mental competence in the foreseeable future. (Penal Code §1370(b)(1)).

4 67. If the report shows that the defendant has been restored to competency, he
5 is returned to court within ten days so that criminal proceedings can resume. (Penal
6 Code §§1372(a), 1372(a)(3)(C) and 1370.1(a)(1)(C)).

7 68. If the report indicates that there is no substantial likelihood that the
8 defendant will regain mental competence, the court shall order the defendant
9 returned to court. (Penal Code §1370(b)(1)(A)) The prosecutor may choose to
10 initiate further civil commitment proceedings pursuant to Penal Code §1370(c)(2),
11 or the court can dismiss the charges pursuant to Penal Code §1385 without
12 prejudice to the initiation of additional civil commitment proceedings. (Penal Code
13 §1370(e)).

14 69. Similarly, at the end of three years from the date of the commitment or the
15 maximum term of imprisonment for the most serious offense charged in a felony
16 case or one year from the date of commitment in a misdemeanor case, whichever is
17 shorter, a defendant who has not recovered competence shall be returned to the
18 court. (Penal Code §1370(c)(1)). The prosecutor may choose to initiate further
19 civil commitment proceedings pursuant to Penal Code §1370(c)(2), or the court
20 can dismiss the charges pursuant to Penal Code §1385 without prejudice to the
21 initiation of additional civil commitment proceedings. (Penal Code §1370).

22 70. A 2014 amendment to Penal Code §1370 which became effective January
23 1, 2015 requires that the court send DHS a 1370 Packet prior to the IST detainee's
24 admission. The packet includes medical, psychiatric, legal, and security
25 information. The list of documents required to be included in the transfer packet is
26 set forth in Penal Code § 1370(a)(3).² DSH will not accept an IST detainee in the

27 ² Penal Code §1370(a)(3):
28

1 absence of a fully completed 1370 Packet. Health and/or medical records must be
2 included as part of the complete 1370 packet. (Penal Code §1370(a)(3)). If the
3 transportation packet is incomplete in any way, DSH will not approve the transfer
4 and the IST detainee will not be placed on the waiting list for transfer.

5 71. Prior to admission, DSH also requires an order from the court that Patton
6 (or other DSH facility) be authorized “to administer involuntary antipsychotic
7 medication to the defendant pursuant to Penal Code §1370(a)(2)(b),” or a finding
8 by the court that the detainee “consents to the administration of psychotropic
9 medications.”

10 72. After these procedural hurdles are satisfied, the IST detainee is placed on
11 the waiting list for transfer to a treatment facility.

12 73. DSH in general and Patton, in particular, have adopted a policy which has
13 come to be known colloquially in Ventura County as “the one in, one out rule.” In

14 (3) When the court orders that the defendant be committed to the State
15 Department of State Hospitals or other public or private treatment facility, the
16 court shall provide copies of the following documents prior to the admission of the
17 defendant to the State Department of State Hospitals or other treatment facility
where the defendant is to be committed:

18 (A) The commitment order, including a specification of the charges.

19 (B) A computation or statement setting forth the maximum term of
commitment in accordance with subdivision (c).

20 (C) A computation or statement setting forth the amount of credit for time
21 served, if any, to be deducted from the maximum term of commitment.

22 (D) State summary criminal history information.

23 (E) Arrest reports prepared by the police department or other law
enforcement agency.

24 (F) Court-ordered psychiatric examination or evaluation reports.

25 (G) The community program director's placement recommendation report.

26 (H) Records of a finding of mental incompetence pursuant to this chapter
arising out of a complaint charging a felony offense specified in Section 290 or a
pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

27 (I) Medical records.

1 essence, DSH will not take a new Ventura County IST detainee “in” until a
2 Ventura County patient currently being treated at Patton has been restored to
3 competency and sent “out” of Patton and back to Ventura County. Every
4 Thursday, a small number, (usually one, two, or three) of IST detainees are brought
5 back from DSH facilities, usually from Patton. A correspondingly small number
6 of IST detainees at the jail are then transferred for treatment. However, it is not
7 unusual for no transfers to occur because no ISTs were returned from DSH that
8 particular week.

9 74. In addition to referring IST detainees for outpatient restorative treatment in
10 CONREP, there are seven other DSH mental health treatment facilities in
11 California where DSH could house Ventura County IST detainees if there are no
12 beds available at Patton: DSH-Atascadero, DSH-Coalinga, DSH-Metropolitan LA,
13 DSH-Napa, DSH-Sacramento, DSH-Salinas Valley, DSH-Stockton, DSH-
14 Vacaville, and Haskins Residential Facility. Despite the availability of restorative
15 treatment in these other facilities, DSH has traditionally limited its referrals of
16 Ventura County IST detainees to Patton. Only recently did DSH begin to refer IST
17 detainees to DSH-Atascadero. Similarly, for the very first time that Plaintiffs are
18 aware of in Ventura County, Defendant MHM referred an IST detainee for
19 outpatient treatment in CONREP, an outpatient program which is operated by
20 MHM.

21 75. Stays of criminal proceedings pending the evaluation, placement
22 recommendation, preparation of the 1370 Packet, and time spent on the waiting list
23 for placement in a DSH treatment facility often last for months before any
24 restorative treatment begins. As a result, ISTs often end up spending more time in
25 jail prior to adjudication than they would if they had pled guilty to a misdemeanor
26 or non-serious felony.

1 76. The failure to timely transfer IST detainees for treatment delays their
2 restoration to competency and also delays the issuance of the treatment facility's
3 mandatory report concerning the defendant's progress toward becoming mentally
4 competent. Unreasonable delays in treating IST detainees have persisted for years,
5 even after California and federal appellate courts have held that these types of
6 delays are unlawful and numerous superior court judges have ordered the State
7 Defendants to show cause why they should not be held in contempt for failing to
8 admit incompetent defendants to an appropriate treatment facility in a timely
9 manner.

10 77. Other than the report from DSH or other treatment provider which is due
11 90 days after the order of commitment pursuant to Penal Code §1370(b)(1), no
12 specific time limits for transfer to a treatment facility or release to an outpatient
13 program are set forth in California's statutory framework.

14 78. California law allows a county jail to be designated as a "treatment
15 facility," upon concurrence of the Board of Supervisors, the county mental health
16 director, and the county sheriff, but provides that the maximum amount of time
17 that a defendant may be "treated" in a designated county jail is six months.³

18 ³ Penal Code §1369.1(a):

19 As used in this chapter, "treatment facility" includes a county jail. Upon the
20 concurrence of the county board of supervisors, the county mental health director,
21 and the county sheriff, the jail may be designated to provide medically approved
22 medication to defendants found to be mentally incompetent and unable to provide
23 informed consent due to a mental disorder, pursuant to this chapter. In the case of
24 Madera, Napa, and Santa Clara Counties, the concurrence shall be with the board
25 of supervisors, the county mental health director, and the county sheriff or the chief
26 of corrections. The provisions of Sections 1370, 1370.01, and 1370.02 shall apply
27 to antipsychotic medications provided in a county jail, provided, however, that the
28 maximum period of time a defendant may be treated in a treatment facility
pursuant to this section shall not exceed six months.

(b) This section does not abrogate or limit any law enacted to ensure the
due process rights set forth in *Sell v. United States* (2003) 539 U.S. 166.

1 79. The sole purpose of this IST statutory scheme "is the humanitarian desire to
2 assure that one who is mentally unable to defend himself not be tried upon a
3 criminal charge." *Tarantino v. Superior Court*, 48 Cal.App.3d 465, 469 (1975).

4 80. The statutory scheme established under Penal Code §1367 *et seq.* is to
5 provide mental competency restorative services so that these disabled individuals
6 have the same access to the criminal justice system and the same rights in
7 connection with facing prosecution for alleged crimes as other mentally able
8 defendants. Indeed, Penal Code §1367 specifically states that a person cannot be
9 tried or punished when that person "is unable to understand the nature of the
10 criminal proceedings or to assist counsel in the conduct of a defense." Further, a
11 person must suffer from a mental disorder or developmental disability in order to
12 be considered incompetent to stand trial. *Id.*

13 81. During the IST evaluation and restoration periods, speedy trial rights are
14 automatically waived and ISTs lose statutory pre-trial custody credits applicable to
15 criminal pre-trial detainees, (*e.g.* Penal Code §4019), and receive only day-for-day
16 credit pursuant to Penal Code §1375.5. Non-IST inmates receive additional time
17 off of their sentences in the form of pre-trial custody credits for good behavior
18 ("good time") and for working in the jail, ("work time").

19 **B. CFMG, Taylor Fithian (CFMG), Paul Adler (CFMG), Ronald**
20 **Pollack (CFMG) Do Not Evaluate the Competency of Individuals**
21 **Charged with Crimes and Do Not Provide Adequate Mental**
22 **Health Treatment While the ISTs are Awaiting Transfer to**
23 **Restorative Services. They discriminate against IST inmates**
Compared to Non-IST inmates.

24 82. As noted above, Ventura County Sheriff Dean contracts with Defendant
25 CFMG, a private corporation to provide all medical and mental healthcare to
26 detainees housed at the VCPTDF and TRJ. Only one psychiatrist is employed full-
27 time by CFMG. CFMG staff do not perform competency evaluations. These
28

1 evaluations are performed by approved, private psychiatrists and licensed
2 psychologists.

3 83. Neither the VCPTDF nor the TRJ are facilities which are licensed to
4 perform competency restoration services. Furthermore, CFMG staff are not
5 contracted to perform competency restoration services. Accordingly, no
6 competency restoration services are provided at the VCPTDF or the TRJ pursuant
7 to Penal Code §1369.1(a), and there is never a Penal Code §1368 placement
8 recommendation or court order that an IST detainee be treated in Ventura County
9 jail facilities. However, Defendants CFMG, Fithian, Adler and Pollack are
10 required to provide mental health treatment to IST detainees while under their care
11 and custody. Plaintiffs are informed that once determined to be IST, CFMG,
12 Fithian, Adler and Pollack essentially ignore IST detainees, and provide them
13 constitutionally deficient mental health treatment while they are pending placement
14 to a DSH facility.

15 84. While CFMG typically provides medication management for people who
16 are willing to take medications, they do not administer medication involuntarily,
17 except in an emergency.

18 85. Treatment for IST detainees is generally limited to basic clinical psychiatry
19 and intervention designed to stabilize an individual's mental health condition. The
20 mental health treatment that they receive prior to being transferred for restorative
21 treatment falls below acceptable constitutional and statutory standards. They are
22 warehoused pending transfer to a State Hospital, and Ventura County and CFMG
23 do nothing to provide on-going mental health treatment, restorative treatment or
24 prompt transfer to a suitable facility that can provide adequate mental health
25 treatment or restorative treatment pending transfer to a State Hospital.

26 86. Individuals found IST are often overtly psychotic and require special
27 housing or segregation. They are unpredictable and disruptive, taking up valuable
28

1 resources needed for the care of other inmates. If they refuse to take medications,
2 they often decompensate rapidly.

3 87. Incapacitated criminal defendants have a high risk of suicide, and the
4 longer they are deprived of treatment, the greater the likelihood they will
5 decompensate and suffer unduly. For example, one detainee committed suicide on
6 May 25, 2015, 61 days after he was found IST and ordered to be transported to
7 Patton. James Siler was attacked in jail by a fellow inmate weeks after he was
8 found IST and ordered to be transported to Patton. All of the currently
9 incarcerated IST detainees face an obvious and significant risk of deterioration of
10 their mental health conditions while they are warehoused in the jail awaiting
11 treatment.

12 88. Because incapacitated criminal defendants are often found to be either a
13 danger to themselves or others, they are often strip searched, placed in safety cells
14 and housed in isolation. Because they are mentally ill and often incapable of
15 defending themselves or controlling unusual behaviors, they are at high risk of
16 being beaten, having their property taken, or otherwise being taken advantage of
17 by fellow inmates. Jails are punitive environments and the conditions of
18 confinement undermine the mental health of these detainees as well as the
19 government's interests in competency restoration and trial.

20 89. Jails control inmates through discipline. Jail disciplinary systems are
21 ineffective for individuals with severe mental health disabilities, which
22 characterizes IST detainees. Because of their unpredictable or disruptive behavior,
23 they are often disciplined, which can include being locked in their cells for 23
24 hours a day, denied visits or phone calls from friends or loved ones, denied
25 commissary privileges or placed on a disciplinary diet. These forms of discipline
26 exacerbate their mental illness. IST detainees are treated as inmates rather than
27 patients. They do not have regular access to phones. They cannot have contact
28

1 visits with their families and loved ones. Their cells are locked. Their primary
2 custodians are deputies. Instead of providing the needed mental health treatment,
3 Plaintiffs are subjected to harsh and punitive treatment as a result of their mental
4 disabilities.

5 90. Unlike the VCPTDF and TRJ, DSH hospitals can treat a person's mental
6 health disabilities and provide competency restoration services. IST detainees are
7 treated as patients rather than inmates. They have regular access to phones. They
8 can leave their rooms. They can have contact visits with their families and their
9 primary custodians are doctors, nurses and social workers. Their hospitals are
10 staffed by full-time psychiatrists and psychologists, mental health specialists,
11 social workers, mental health technicians, and nurses. In addition, unlike the
12 VCPTDF and TRJ, DSH hospitals can provide necessary medication, even if it is
13 sometimes involuntary, which is necessary for some persons to regain their
14 competency.

15 91. In addition to assessment, medication evaluation and management, and
16 individual and group psychotherapy, DSH hospitals provide individuals with
17 mental health disabilities with legal skills training to assist them in learning about
18 the law, the roles of the attorneys, witnesses and the court, and what they can
19 expect after returning to court. This treatment is designed to restore a person to
20 competency to stand trial and to otherwise exercise their constitutional rights
21 meaningfully.

22 **C. Defendants Have Failed to Evaluate and/or Treat Individuals**
23 **with Mental Health Disabilities Who Have Been Charged with a**
24 **Crime in Ventura County in a Timely Fashion.**

25 92. According to public records obtained by Plaintiffs' counsel, at the time of
26 the filing of the initial complaint in this matter, there were more than fifteen people
27 waiting in the VCPTDF and TRJ who had been found incompetent to stand trial,
28 had been approved for transportation to Patton or another facility, but had not yet

1 been transported. Plaintiffs are further informed and believe that at least ten, and
2 probably more, of these civilly committed detainees who were in custody at
3 VCPTDF or TRJ waited more than 30 days for transportation to a treatment facility
4 after being civilly committed by the court. Plaintiffs are further informed and
5 believe that at least six, and probably many more, of these civilly committed
6 detainees at VCPTDF or TRJ waited for more than 120 days for transportation to a
7 treatment facility after being civilly committed by the court. Plaintiffs are further
8 informed and believe that delays of three to six months have been commonplace
9 for several years preceding the date of this filing, and that the class affected by
10 these policies numbers well over 100 individuals. Defendants have consistently
11 failed to timely admit these individuals to DSH hospitals for restoration of
12 competency.

13 93. Plaintiffs and those similarly situated each have histories of severe mental
14 health conditions. Most have been ordered by courts presiding over their criminal
15 proceedings to be transported to a DSH hospital to be restored to competency to
16 stand trial. Plaintiffs have languished in the jail for weeks and months without
17 necessary care and treatment to the detriment of their overall mental health.

18 94. As a result of languishing in jail for weeks or months without necessary
19 care and treatment, Plaintiffs and those similarly situated have suffered pain,
20 anxiety, isolation, and worsening of their mental illnesses, unequal conditions of
21 confinement as described herein compared to non-IST inmates (both compared to
22 regular general population inmates and to inmates with less severe mental
23 illnesses), as well as being subjected to unjustified disciplinary measures, increased
24 risk of being the victims of violence by other inmates because of their perceived or
25 actual inability to defend themselves. They have also been denied equal access to
26 statutory pre-trial and custody credits compared to Non-IST inmates. All
27 Defendants are aware of this discriminatory treatment and act in reckless disregard
28

1 for, and deliberate indifference to, this punitive, unequal, and discriminatory
2 treatment compared to non-IST inmates.

3 **D. CFMG Defendants' Custom, Pattern And Practice Of Failing**
4 **To Provide Constitutionally Required Mental Health Treatment**

5 95. The CFMG Defendants have a custom, pattern and practice of failing to
6 timely provide mental health treatment and medication to IST inmates held in their
7 custody.

8 96. The CFMG Defendants engage in a custom, pattern and practice of failing
9 to provide IST detainees with proper housing to ensure appropriate mental health
10 care treatment. IST inmates are often written up for behavior based on their
11 disability, mental problems and incompetency and are then disciplined
12 inappropriately by placing them in isolation for prolonged periods of time, feeding
13 them a disciplinary diet, denying them commissary and visits and phone calls from
14 friends and family.

15 97. CFMG defendants have a custom, pattern and practice of failing to
16 adequately keep records of mental health treatment of IST detainees, failing to
17 adequately staff the jail with mental health caretakers, failing to prevent suicides of
18 IST detainees, failing to provide therapy or therapeutic services for IST detainees,
19 and failing to ensure IST detainees have equal opportunities to participate in and
20 benefit from jail services, programs and activities. CFMG does not comply with
21 the proper ratio of specialized staff for hospitals operating or psychiatric unit. 22
22 CFR 70217(a)(13) requires a ratio of 1:6 or fewer of licensed nurses vs. patients.

23 98. CFMG defendants have deprived IST inmates of mental health treatment
24 and have acted with reckless disregard of IST inmates' State and Federal
25 constitutional and statutory rights. They have intentionally discriminated against
26 IST inmates by failing to provide timely and constitutionally adequate mental
27 health treatment.

1 99. On August 12, 2015, Sheriff Dean submitted a Proposal Form to the Board
2 of State and Community Corrections (BSCC) for construction financing for a 64-
3 bed housing, clinic and programming unit for inmates with medical and mental
4 health needs. (See Plaintiff's Request for Judicial Notice ("PRJN"), ECF Doc. No.
5 51, Ex. 1, pp. 1- 2.)

6 100. CFMG was well aware of the contents of this proposal because Nicoletta
7 Weeks, CFMG's Facility Manager at the VCPTDF was, and is, a member of the
8 proposed Todd Road Jail medical/mental health facility's Planning Team, which
9 "meets regularly and performs all the necessary tasks associated with the planning
10 process". (PRJN, Ex. 1, p. 40).

11 101. In the Proposal, Sheriff Dean identified a growing gap between the
12 number of mentally ill inmates and the number of available beds for them. On a
13 system-wide basis, only 2 percent of available beds are presently designed for
14 inmates in need of medical or mental health treatment. The number of beds
15 allocated for inmate-patients requiring treatment services falls short of meeting
16 even minimal jail system needs. (*Id.* at pp. 12-13)

17 102. "The PTDF was designed with 12 medical/mental health beds to serve a
18 total inmate capacity of 400 in single-bunk cells." (*Id.* at p. 12) The original
19 medical/mental health housing was inadequate to support the facility's larger
20 population. In response, double-bunking of the existing medical/mental health area
21 and conversion of some office and dayroom space increased total facility
22 medical/mental health housing to 32 beds. (*Id.* at p. 12) "Even with this increase,
23 the Sheriff's Office was forced to utilize a housing area designed for general
24 population inmates to house the overflow of inmate-patients with mental health
25 issues. This housing area has inadequate resources with which to provide necessary
26 services to this population." (*Id.*) Currently, inmate-patients housed in the PTDF's
27 medical/mental health housing do not have access to the higher level of
28

1 programming that is available at TRJ, due to the PTDF facility's limitations. (*Id.*
2 at p. 22)

3 103. "Approximately 2 percent of the inmate population is assigned to a
4 specialized medical/mental health care bed, while the current need for the
5 population that has been diagnosed with acute medical/mental health needs is
6 around 5 percent." (*Id.* at p. 19) "The PTDF facility was never intended to house
7 medical or mental health inmate-patients for the length of time they are holding
8 offenders today. The current design does not allow a reasonable way to provide the
9 type of space or programs this population so desperately needs." (*Id.* at p. 29)

10 104. From 2015-2016, the Ventura County Grand Jury "inquired into the
11 condition and management" of jails in Ventura County and presented its findings
12 in a final report dated May 24, 2016. (See Plaintiffs' PRJN, Ex. 2, ECF Doc. No.
13 51.) The Grand Jury reported very different and much more alarming figures than
14 Sheriff Dean. "The Main Jail has 18 cells to house the medically ill and two cells
15 to house inmates with Severe and Persistent Mental Illness (SPMI). The severely
16 mentally ill are segregated from the general populace and are supervised 24/7. It
17 was reported that 42% of female inmates and 18% of male inmates exhibit some
18 symptoms of mental illness. Of this population, 21% of the female inmates and
19 11% of the male inmates are classified SPMI." (*Id.* at p. 6) (emphasis added).

20 105. These problems are compounded by the lack of treatment beds and
21 resources identified by Sheriff Dean in his Funding Proposal for a new facility at
22 Todd Road last year. Sheriff Dean asserted that "the jail system's 32 dedicated
23 treatment beds [sic] do not provide adequate resources to manage and effectively
24 treat these inmate-patients." (See Plaintiffs' PRJN, Ex. 1, p. 14) Sheriff Dean
25 identified six specific problems relating to treating the mentally ill as a result:

26 (1) "This shortage of medical/mental health housing has resulted in the
27 release of inmate-patients from medical beds back to general population housing
28

1 prior to the completion of their medical treatment plans[...] The population of
2 inmates with severe and persistent mental illness that are housed in overflow
3 housing often require separation from other inmates for their own protection.” (*Id.*
4 at p. 14);

5 (2) “While the Sheriff’s Office attempts to provide support and
6 programming within the housing unit, the facility is not designed for treatment or
7 for evidence-based programming, diminishing the effectiveness of the treatment
8 provided.” (*Id.* at p. 14);

9 (3) “In addition, the medical/mental health housing unit is located near an
10 area with heavy traffic from within the main circulation area of the PTDF, creating
11 undo stress on the mental health inmate-patient population.” (*Id.* at p. 16);

12 (4) “The lack of adequate programming space within the medical/mental
13 health housing units requires treatment to take place in hallways.” (*Id.* at p. 16);

14 (5) “Currently, the program space for medical/mental health is almost non-
15 existent. When programming does occur, inmate-patients need to be handcuffed to
16 individual tables within the dayroom to allow for safe programming. Handcuffing
17 these individuals to tables in the dayroom is not conducive to the successful
18 treatment of the medical/mental health inmate-patients.” (*Id.* at p. 27); and

19 (6) “Currently, inmate-patients housed in the PTDF’s medical/mental health
20 housing do not have access to the higher level of programming that is available at
21 TRJ, due to the PTDF facility’s limitations.” (*Id.* at p. 22). These TRJ programs
22 include evidence-based treatment for substance abuse, treatment basics, English as
23 a Second Language, Malachi Men class and Women of the Word (both faith-based
24 leadership programs), ServeSafe food handler certificate, working in the Print
25 Shop, moral reconation therapy, Transitions Program, S.T.E.P.S. program, Re-
26 entry Action Planning (R.A.P.) Bridges to Work, Changing Course Journal,
27 Transitional-Aged Youth programs, Vocational Training (emphasis on local
28

1 agricultural and landscape employment), County Behavioral Health Agency
2 discharge/pre-release counseling and planning for inmates with mental disorders
3 (including that a prescribed medication supply is available for those in need),
4 County Public Health Agency AIDS awareness sessions and individual counseling.
5 (*Id.* at p. 11, 32-34, 93).

6 106. State defendants have a custom, pattern and practice of failing to accept
7 IST detainees on a timely basis within a reasonable amount of time, or within any
8 reasonable time, after the date on which the court entered an order for the Sheriff
9 to transfer the person to a treatment facility, thus depriving IST detainees of their
10 constitutional rights to timely and adequate mental health treatment or restorative
11 treatment, and have acted with reckless disregard of IST inmates State and Federal
12 constitutional rights, and State and Federal statutory rights. They have
13 intentionally discriminated against IST inmates by failing to provide timely and
14 constitutionally adequate mental health treatment or restorative treatment, and
15 discriminated against them as compared to non-IST inmates by prolonging their
16 custody and depriving them of equal statutory pre-trial custody credits while in IST
17 custody, and allowing them to languish in punitive, unequal conditions of
18 confinement compared to IST inmates.

19 **V. CLASS ACTION ALLEGATIONS**

20 107. Plaintiffs SCOTT and MOJICA by and through their guardians ad litem,
21 (collectively, the “Class Plaintiffs”) bring this action pursuant to Civil Rule 23(a),
22 (b)(1), (b)(2) and (b)(3) on behalf of themselves and all others similarly situated
23 (collectively, the “Class Members”).

24 108. Class Members seek class-wide equitable, declaratory and injunctive
25 relief, as well as damages, pursuant to Federal Rules of Civil Procedure, Rule
26 23(a), b(1), and (b)(2), and (b)(3).

27 109. The Equitable Relief Class (F.R.Civ.P. 23(b)(3)) is defined as follows:
28

1 All persons who are presently, and/or who will be in the future:

2 (1) incarcerated at the VCPTDF or TRJ;

3 (2) charged with a crime in Ventura County, California;

4 (3) found by a court to be incompetent to stand trial;

5 (4) held in custody while awaiting competency restoration
6 services; and,

7 (5) have waited for court-ordered restoration services for seven
8 or

9 more days (or a reasonable period of time as determined

10 by the constitution) after DHS first had a duty to admit the

11 detainee. (This duty arises when **both** of the following have

12 occurred: (1) the court enters an order for the Sheriff to

13 transfer the person to a treatment facility, and (2) the

14 treatment facility has received the 1370 Packet from the

15 court.)

16 110. The damages relief (F.R.Civ.P. 23(b)(3)) class is defined as follows:

17 All persons who have been, during the time period of May 5, 2014 (or
18 possibly earlier, based on a legal determination of the applicable statute of
19 limitations, hereafter the “damages class period”), until the present, and
20 through the time of resolution of this case

21 (1) incarcerated at the VCPTDF or TRJ;

22 (2) charged with a crime in Ventura County, California;

23 (3) found by a court to be incompetent to stand trial;

24 (4) held in custody while awaiting competency restoration
25 services; and,

26 (5) have waited for court-ordered restoration services for seven
27 or more days (or a reasonable period of time as determined
28

1 by the constitution) after DHS first had a duty to admit the
2 detainee. (This duty arises when **both** of the following have
3 occurred: (1) the court enters an order for the Sheriff to
4 transfer the person to a treatment facility, and (2) the
5 treatment facility has received the 370 Packet from the court.)

6 **A. Numerosity**

7 111. The class meets the numerosity requirement of Rule 23(a)(1). On
8 information and belief, more than 40 Class members are denied the rights at issue
9 each year, and the Damages Class currently exceeds 100 individuals (and
10 growing), making individual joinder of all members impractical. Similarly, the
11 Equitable Relief Class consists of an ever increasing number of individuals whose
12 rights are being violated.

13 112. The identities of the Class Members are ascertainable through records
14 held by Defendants and/or the courts from which the evaluations or restorations of
15 competency were ordered. Members of the Class may be informed of the
16 pendency of this class action by use of contact information in the possession of
17 Defendants as well as from court records.

18 **B. Commonality.**

19 113. The class meets the commonality requirement of Rule 23(a)(2).
20 Questions of law and fact presented by the named plaintiffs are common to other
21 members of the class. The common contentions that unite the claims of the class
22 include, but are not limited to, the following:

- 23 a. Did/do the State Defendants, Ahlin and Oreol, personally implement, or
24 acquiesce in a policy that resulted in denying IST inmates their
25 constitutional rights to timely restorative mental health treatment?
26 b. Did/do Defendants Ahlin and Oreol act with deliberate indifference of
27 Plaintiff's constitutional rights, and did their actions have a disparate impact
28

on Plaintiffs under Title II of the ADA and Section 504 of the Rehabilitation Act?

- c. Did the individual State Defendants, Ahlin and Oreol, violate the due process clause of the United States and California Constitutions, Section II of the ADA, Section 504 of the Rehabilitation Act, and the Bane Act, Civil Code § 52.1?
- d. Are Plaintiffs entitled to injunctive relief against Ahlin and Oreol in their official capacity for violating Plaintiffs' rights?
- e. Are Plaintiffs entitled to damages against Ahlin and Oreol in their individual capacities?
- f. As to Defendants MHM Services and Lopez, did they violate the Federal Constitution by failing to timely place IST detainees in facilities so that they could receive restorative mental health treatment, and by failing to place IST detainees in CONREP out-patient facilities? If so, are Plaintiff's entitled to damages against them, as well as injunctive relief?
- g. As to Defendants CFMG, Fifthian, Adler and Pollack, did they violate Plaintiff's constitutional rights to mental health treatment?
- h. Did Defendants CFMG, Fifthian, Adler and Pollack violate Title III of the ADA?
- i. Did Defendants CFMG, Fifthian, Adler and Pollack violate the Bane Act?
- j. Are Plaintiffs entitled to presumed damages under § 1983 and/or statutory damages for violations of California Civil Code 52.?

114. These and other common questions of law and fact predominate over any questions affecting only individual Class Members. The Class Action is superior to individual actions; the class is manageable, particularly in light of information contained in Defendants' records; and members of the Class are ascertainable through Defendants' records.

1 **C. Typicality.**

2 115. The claims of Plaintiffs SCOTT and MOJICA are typical of those of the
3 class as a whole because they were detained in the County facilities without
4 adequate (or any) mental health services for extended periods (many weeks or
5 months beyond the mandatory periods provided by California law) prior to their
6 admission to a treatment facility which provides restorative services in violation of
7 the Federal Constitution, Federal Statutes, State Constitution and State law.

8 116. The Class Plaintiffs' claims are typical of the claims of the Class because
9 Defendants have uniformly and systematically failed to provide timely adequate
10 mental health treatment and competency restoration services to Class Plaintiffs and
11 to the Class.

12 117. Class Plaintiffs will fairly and adequately protect the interests of the Class.
13 There are no known conflicts of interest between the Class Plaintiffs and other
14 Class Members. The Class Plaintiffs will vigorously prosecute this action on behalf
15 of the Class. The Class Plaintiffs are represented by competent counsel with
16 considerable skill and experience in civil rights and class action litigation, who will
17 vigorously prosecute this case on behalf of the Class.

18 **D. Adequacy of Representation.**

19 118. Class Plaintiffs will fairly and adequately protect the interests of the Class.
20 There are no known conflicts of interest between the Class Plaintiffs and other
21 Class Members. The Class Plaintiffs will vigorously prosecute this action on behalf
22 of the Class. The Class Plaintiffs are represented by competent counsel with
23 considerable skill and experience in civil rights and class action litigation, who will
24 vigorously prosecute this case on behalf of the Class.

25 119. Defendants have acted or refused to act on grounds generally applicable to
26 the entire class, thereby making final injunctive and declaratory relief appropriate
27 with respect to the Class as a whole.
28

1 120. The claims asserted herein are capable of repetition while evading review.
2 There is a continuing and substantial public interest in these matters.

3 121. The class action is the best available method for the efficient adjudication
4 of these legal issues because individual litigation of these claims would be
5 impracticable, and individual litigation would be unduly burdensome to the courts.
6 Further, individual litigation has the potential to result in inconsistent or
7 contradictory judgments. A class action in this case presents fewer management
8 problems and provides the benefits of single-adjudication, economies of scale, and
9 comprehensive supervision by a single court.

10 **VI. EXHAUSTION OF JURISDICTIONAL PREREQUISITES**

11 122. Plaintiff representatives on behalf of themselves and Class Members
12 exhausted the administrative remedies to the extent available required under the
13 Prison Litigation Reform Act ("PLRA"), 42 U.S.C. §1997e, prior to filing this
14 Complaint. Additionally, such remedies were unavailable within the meaning of
15 the PLRA because a) Ventura County Jail asserted that the claims were beyond its
16 control and it had no ability to remedy them, b) Plaintiffs totally lacked mental
17 capacity such that they were able to pursue administrative remedies on their own,
18 and Defendants had no grievance mechanism available for such circumstances, and
19 c) Plaintiffs could not pursue administrative remedies against a State entity or the
20 private defendants because Plaintiffs were not inmates of any state entity or private
21 defendant at the time they failed to receive adequate mental health treatment and
22 restorative services such that administrative remedies were available to them.

23 123. Plaintiff representatives, on behalf of themselves and Class Members,
24 filed Government Code §910 tort claims with the State of California and the
25 County of Ventura. The County denied the 910 claim on May 3, 2016.
26 Inexplicably, the State stated that Claim G631362 for SCOTT was untimely even
27 though SCOTT was still in the custody of the VCPTDF and the other class
28

1 representative, MOJICA, was also in custody of the VCPTDF at that time.

2 Plaintiffs and Class Members have timely filed this lawsuit thereafter.

3 124. Plaintiff representatives, on behalf of themselves and Class Members,
4 filed a complaint with the DHS on or about November 7, 2016 in order to comply
5 with the administrative remedies exhaustion requirements pursuant to California
6 Code of Regulations, Title 22, § 98003. Plaintiffs will amend this Complaint to
7 add a claim under Civil Code § 11135 when those administrative remedy
8 provisions have been exhausted.

9 **VII. DAMAGES**

10 125. As a result of the various violations alleged herein, Plaintiffs experienced
11 physical, emotion and mental harm, and general and/or special damages. Plaintiffs
12 seek all available damages remedies, including but not limited to compensation for
13 actual damages, special and general damages, statutory damages, and, as against
14 the individual defendants, punitive or exemplary damages. They also seek civil
15 penalties to the extent available.

16 **VIII. CLAIMS FOR RELIEF**

17 **FIRST CLAIM FOR RELIEF**

18 **Violation of the Fourteenth Amendment to the United States**
19 **Constitution (42 U.S.C. §1983) and Article 1, Section 7, California**
20 **Constitution (Due Process)**

21 **Against Defendants Ahlin, Oreol, (for injunctive relief in their official**
22 **capacities, and for damages in their personal capacities), and against**
23 **MHM and Lopez for damages and injunctive relief, And Does 1-10**

24 126. As a result of the various violations alleged herein, Plaintiffs experienced
25 physical, emotional and mental harm, and general and/or special damages.
26 Plaintiffs seek all available damages remedies, including but not limited to
27 compensation for actual damages, special and general damages, statutory damages,
28

1 and, as against the individual defendants, punitive or exemplary damages. They
2 also seek civil penalties to the extent available.

3 Plaintiffs incorporate by reference each and every allegation contained in the
4 foregoing and following paragraphs, as though set forth herein *verbatim*.

5 127. Due process requires that the nature and duration of confinement must
6 bear a reasonable relation to the purpose for which a person is committed.

7 128. Once an individual is found IST, the only lawful purpose for confinement
8 is to treat the individual in order to return him or her to competency.

9 129. Individuals found IST have a constitutional right to such individualized
10 treatment as will give each of them a realistic opportunity to be cured or to
11 improve their mental condition.

12 130. IST inmates are also entitled to constitutionally adequate mental health
13 treatment and equal protection under the law, equal statutory pre-trial custody
14 credits as non-IST inmates, as well as equal conditions of confinement as non-IST
15 inmates.

16 131. The State Defendants, Ahlin and Oreol, have consistently failed to
17 timely treat IST detainees after their Constitutional and statutory duty to do so
18 arose.

19 132. The State Defendants discriminated against, and failed to provide
20 adequate mental health treatment to, IST inmates, given their knowledge of the
21 substandard conditions of confinement, access to the courts and equal statutory
22 pre-trial custody credits that IST inmates have compared to non-IST inmates. The
23 State Defendants knew or should have known and failed to adequately address the
24 following:

25 A. ISTs are held in county custody in violation of the California and Federal
26 Constitution and state statutes for indefinite periods of times without
27
28

1 restorative mental health care or basic mental health treatment solely due to
2 their IST condition;

3 B. ISTs are discriminated against compared to non-IST inmates in housing as
4 they are held in isolation and not general population solely due to their IST
5 condition;

6 C. ISTs are discriminated against compared to non-IST inmates in conditions of
7 confinement as they are often punished solely due to their IST condition;

8 D. ISTs are discriminated against as compared to non-IST inmates as they do
9 not get the same visiting, phone call and commissary privileges solely due to
10 their IST condition;

11 E. ISTs are discriminated against compared to non-IST inmates as they serve
12 longer sentences and lose statutory pre-trial custody credits as they languish
13 indefinitely in their conditions of confinement, and,

14 F. ISTs were denied equal access to the Courts due to their indefinite and
15 prolonged custody without mental health care that denied them equal
16 statutory pre-trial custody credits due to their indefinite, prolonged custody.

17 133. Defendant MHM and Defendant Marcus Lopez have discretion under state
18 guidelines to place IST detainees in CONREP out-patient restorative treatment
19 programs, which would reduce the delay in placement and the provision of
20 constitutionally required timely restorative mental health treatment. It would
21 reduce the delay by lowering the number of placements in inpatient DSH facilities.
22 Despite the authority to make such placements and with knowledge of the
23 unconstitutional delays, MHM routinely makes DSH placements which results in
24 unconstitutional delays in treatment. Plaintiff is informed and believes and based
25 thereon alleges that recently statewide MHM has referred 28-29 IST detainees to
26 outpatient treatment in CONREP. The First IST detainee from Ventura County to
27 receive outpatient treatment in CONREP was Brian McKenney on February 17,

1 2017. As of today, Plaintiff is aware of no IST detainees from Ventura who have
2 been referred to the JBCT.

3 134. The statutory scheme set forth above provides Plaintiffs and the Plaintiff
4 Class a liberty interest in timely and meaningful medical and mental health
5 treatment while being held pending evaluation, treatment and restoration of their
6 mental health. However, Plaintiffs' claims do not depend on such a state created
7 liberty interest, as Plaintiffs have independent liberty interests in freedom from
8 incarceration absent a criminal conviction and in restorative treatment. Substantive
9 and procedural due process thus require that Plaintiffs, who have not been
10 convicted civilly committed persons be provided with mental health treatment that
11 gives them a realistic opportunity to be cured or improve the mental condition for
12 which they were confined.

13 135. These Plaintiffs and the Plaintiff Class are incarcerated civil detainees who
14 lose statutory pre-trial custody credit that ordinary criminal defendants receive
15 while held pending restoration of their mental competency and, therefore, ISTs are
16 often held in custody longer. These IST detainees sit in county jails for months
17 without treatment so their mental health often deteriorates. They are disciplined
18 more frequently than other inmates, are often taken advantage of by other inmates,
19 and are at a higher risk for suicide.

20 136. Acting under color of state law, Defendants have violated and caused
21 violations of the Class Plaintiffs' due process rights pursuant to the Fourteenth
22 Amendment to the United States Constitution.

23 137. Unless enjoined by the Court, Defendants will continue to violate and cause
24 the violation of the constitutional rights of the Class Plaintiffs and the Class.

25 138. Plaintiffs have no adequate remedy at law for the continuing, ongoing
26 violations of their rights, and will suffer irreparable harm unless
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1 139. As a direct and proximate cause of the aforementioned acts of Defendants,
2 Plaintiffs and those similarly situated have been damaged in amounts to be
3 determined at trial.

4 140. Plaintiffs have been damaged through the additional time they spent in jail
5 due to their prolonged detention in county jail without access to restorative
6 treatment, the lack of treatment and rehabilitation services while spending
7 unnecessary time in jail. During their unnecessary and prolonged detention in
8 violation of their rights, they have been disciplined for violating jail rules as a
9 result of their mental health disabilities, detained in isolation cells, commonly
10 referred to as "the hole," and administrative segregation, and lost visits and
11 commissary.

12 141. Under this claim, Plaintiffs seek damages from Defendants Ahlin and Oreol
13 in their personal capacity, and against MHM and Lopez, and for injunctive relief
14 against them.

15 **SECOND CLAIM FOR RELIEF**

16 **Failure to Provide Adequate Medical Care to Inmates:** 17 **Violations of the 14th Amendment of U.S. Constitution, and** 18 **Article I, Sections 7 and 17 of California Constitution** 19 **As Against Defendants CFMG, Fithian, Adler and Pollack**

20 142. Plaintiffs incorporate by reference each and every allegation contained in
21 the foregoing and following paragraphs, as though set forth herein *verbatim*.

22 143. Defendants CFMG and Fithian, have a policy and practice of failing to
23 provide adequate mental health care to IST detainees in the Jail. This policy and
24 practice was implemented by Defendant Adler, the medical director at VCPTDF,
25 and Defendant Pollack, the psychiatrist at VCPTDF. The mental health care
26 provided by these Defendants to IST detainees in the Jail is woefully inadequate
27 and falls far short of all of the minimum elements of a constitutional mental health
28 system.

1 144. Defendants are deliberately indifferent to the fact that their failure to
2 provide adequate mental health care subjects inmates to a substantial risk of
3 deteriorating psychiatric conditions, extreme and unnecessary anguish and
4 suffering, and, in some cases, even death. Defendants have been and are aware of
5 all of the deprivations complained of herein, and have condoned or been
6 deliberately indifferent to such conduct.

7 145. Defendants' failure to provide minimally adequate mental health care to
8 pre-trial detainees violates the due process clause of the Fourteenth Amendment to
9 the United States Constitution, and Article I, Sections 7 and 15 of the California
10 Constitution.

11 146. By their policies and practices described herein and above, Defendants
12 CFMG, Fithian, Adler and Pollack, subject Plaintiffs and the IST class they
13 represent, to inadequate mental health care which falls below minimal
14 constitutional and statutory standards during their pre-trial incarceration at
15 VCPTDF and TRJ.

16 147. These policies and practices have been, and continue to be, implemented by
17 Defendants and their agents or employees in their official capacities, and are the
18 proximate cause of Plaintiffs' and the IST class's ongoing deprivation of rights
19 secured by the United States Constitution and the California Constitution.

20 148. All mental health care in the Jails, like medical care, is provided by
21 Defendant CFMG and its employees. CFMG is a for-profit corporation which
22 provides these services pursuant to its contract with Defendants COUNTY and
23 VCSO, and DEAN.

24 149. Defendants CFMG, Fithian, Adler, and Pollack are the sole providers of and
25 fully control all medical and mental health care available to inmates in VCPTDF
26 and TRJ. Accordingly, inmates cannot receive any mental health care services--
27 including psychotropic medication, group and individual therapy, and suicide
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1 intervention--unless Defendants provide them. Defendants control inmates' access
2 to mental health care professionals, inside or outside of the Jails, as well as their
3 access to laboratory or other diagnostic testing.

4 150. CFMG Defendants fail to provide adequate mental health care to the
5 mentally ill population including IST detainees at the pre-trial detention facility, in
6 that they have been aware of the facility's deficiencies identified in Sheriff Dean's
7 August 2015 "Proposal Form to the Board of State and Community Corrections"
8 and the Ventura County Grand Jury report in 2015-2016 (which include: (1) on a
9 system-wide basis, only 2% of available beds are designated for inmates in need of
10 medical or mental health treatment, while the current need is around 5% of the
11 inmate population; (2) there are only two cells to house the severely mentally ill
12 inmates, and as a result they are segregated from the general populace; (3) the
13 program space at the pre-trial detention facility is almost non-existent and those at
14 the pre-trial detention facility do not have access to the level of programming at the
15 Todd Road facility; and (4) the medical/mental health housing unit is located near
16 an area with heavy traffic, creating undue stress on the mental health inmate-patient
17 population) but have failed to provide adequate treatment in light of the facility's
18 deficiencies, including a failure to place IST detainees in alternative facilities
19 which could provide adequate care for these inmates.

20 151. Defendants maintain insufficient numbers of mental health care
21 professionals to provide minimally adequate care to the IST detainees.

22 152. Upon information and belief, Defendants CFMG, Fithian, Pollack and
23 Adler, fail to work with jail custody staff in order to ensure that the mentally ill
24 inmates, including IST detainees, receive adequate treatment with regard to : (1)
25 appropriately housing for inmates with serious mental illness; (2) transferring
26 inmates to facilities that provide inpatient mental health care when it is necessary;
27 (3) identifying inmates who are at risk of suicide and responding adequately to
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1 inmates who are exhibiting suicidal tendencies; (4) treating mental health issues
2 without resorting to use of physical force, improper use of restraints, and/or
3 violence to control the inmates; (5) responding to mentally ill inmates whose non-
4 conforming behaviors are a product of their mental illness; (6) recognizing when
5 they need to refer mentally ill inmates to therapy; and (7) improperly placing
6 inmates with mental illness in safety cells for prolonged periods of time.

7 153. Defendants provide little to no individual or group treatment to inmates
8 with mental health problems, even for inmates who are acutely or chronically
9 mentally ill. Therapy in an individual or group setting is almost never offered or
10 provided to inmates, regardless of whether inmates were receiving therapy as a part
11 of their treatment for mental illness outside of the Jail.

12 154. Defendants do not provide psychosocial rehabilitation services, which
13 include structured out-of-cell programming that addresses their symptoms of
14 mental illness, reduces their isolation, and promotes compliance with treatment and
15 medications. Without this care, seriously mentally ill inmates are at an
16 unreasonable risk of decompensating and of not responding fully to the treatment
17 they do receive. This deterioration can take many damaging forms, including
18 increased symptoms and non-adherence to treatment.

19 155. Defendants CFMG, Fithian, Adler and Pollack fail to provide adequate
20 mental health treatment to inmates housed in administrative segregation. Upon
21 information and belief, these Defendants and jail custody staff do not have
22 adequate safeguards in place to ensure that inmates with mental illness are only
23 placed in administrative segregation when absolutely necessary. IST Detainees are
24 housed in administrative segregation units in ways that place such inmates at
25 substantial risk of serious harm and with little to no amount of structured out of
26 cell time. The conditions in the administrative segregation units are extremely
27 punitive, isolating, and restrictive. These conditions significantly increase the risk
28

1 that inmates with mental illness will have their condition decompensate when
2 placed in administrative segregation. A significantly disproportionate percentage of
3 suicides occur in administrative segregation units. Because of the risks posed by
4 administrative segregation to inmates with mental illness, a consensus has been
5 reached in mental health correctional communities that inmates with mental illness
6 should only be placed in administrative segregation if absolutely necessary. In
7 addition, if inmates with mental illness are placed in administrative segregation,
8 there must be limits on the amount of time they remain in such units, they must be
9 monitored closely, and they must be provided with significant structured and
10 unstructured out-of-cell time. IST Detainees are often housed in isolation cells,
11 commonly referred to as “the hole” and safety cells. When housed in an isolation
12 cell, inmates have even less freedom to move around and interact with other
13 inmates, and they have extremely limited access to programs and services at the
14 Jail. Accordingly, inmates with serious mental illnesses are denied access to
15 programs and services because Defendants place inmates with serious mental
16 illness in lockdown units or isolation cells.

17 156. Upon information and belief, Defendants CFMG, Fithian, Adler and Pollack
18 exacerbate the psychological trauma experienced by inmates with serious mental
19 health conditions who are housed in safety cells by failing to provide them with
20 necessary mental health care and by allowing overuse of these safety cells for
21 prolonged periods of time by jail custody staff. These inmates do not receive
22 sufficient contact with mental health providers. As a result, their nonconforming
23 behaviors often escalate and they are forced to stay in safety cells or administrative
24 segregation.

25 157. Upon information and belief, Defendants fail to intervene in the disciplinary
26 process which fails to take into account behavior which results from inadequate
27 mental health care. Upon information and belief, as a result of Defendants’ failure
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1 to provide adequate mental health care, inmates with serious mental conditions
2 may be unable to conform to Jail rules or be safe.

3 158. IST detainees are housed in cells with other inmates. In response, rather
4 than provide them with the treatment they need, VCSO discipline the IST detainees
5 in various ways, including but not limited to: (1) housing these inmates in isolation
6 in the rubber rooms; (2) taking away their visitation rights; (3) taking away
7 commissary rights; and (4) taking away phone calls. Defendants CFMG, Fithian,
8 Adler and Pollack do nothing to explain to VCSD staff that IST detainees should
9 not be disciplined for behaviors that manifest mental illness and are not discipline
10 problems. Plaintiffs are informed and believe that they do nothing to intervene on
11 behalf of the IST detainee population, not only to prevent unwarranted discipline,
12 but to ensure that their mental health issues are treated appropriately and are not
13 exacerbated, and that they receive the constitutionally required mental health
14 treatment after their IST designation and before transfer to a State hospital.

15 159. Upon information and belief, VCPTDF and Defendants CFMG, Fithian,
16 Adler and Pollack lack adequate policies and procedures regarding the transfer of
17 IST inmates who require inpatient care to outside medical facilities that provide
18 higher levels of care and treatment. Inmates in the Jail may require care at an
19 inpatient facility in a variety of circumstances, including, but not limited to, when
20 they are in acute mental health crisis and they have been found mentally
21 incompetent to stand trial. The County Jail is not a facility licensed to provide
22 inpatient mental health care treatment to any individuals, and the Jail and
23 defendants CFMG, Fithian, Adler and Pollack do not provide an adequate inpatient
24 level of care to IST detainees..

25 160. Plaintiffs and the IST detainee class have each been damaged by
26 Defendants' failure to provide adequate mental health care to the IST detainees
27 before their transfer, including but not limited to, suffering pain, anxiety, isolation,
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1 and worsening of their mental illnesses. CFMG Defendants' failure to provide
2 adequate mental health care to the IST detainees causes further damages by
3 allowing for these inmates to suffer unequal conditions of confinement,
4 punishment due to their IST condition, denial of equal statutory custody credits,
5 being subjected to unjustified disciplinary measures, increased risk of being the
6 victims of violence by other inmates because of their perceived or actual inability
7 to defend themselves, as well as Defendants' failure to provide adequate mental
8 health care in response to the IST inmates' serious medical needs continues to
9 result in further significant injury and the unnecessary and wanton infliction of
10 pain.

11 **THIRD CLAIM FOR RELIEF**
12 **Violation of Title II of the Americans with Disabilities Act**
13 **(42 U.S.C. §12132 *et seq.*)**
14 **Against the Defendants AHLIN, and OREOL**

15 161. Plaintiffs incorporate by reference each and every allegation contained in the
16 foregoing and following paragraphs, as though set forth herein *verbatim*.

17 162. The ADA defines “a qualified individual with a disability” as a person who
18 suffers from a “physical or mental impairment that substantially limits one or more
19 major life activities,” including, but not limited to, “caring for oneself, performing
20 tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending,
21 speaking, breathing, learning, reading, concentrating, thinking, communicating,
22 and working.” 42 U.S.C. § 12102(1)(A), (2)(A). All Plaintiffs and the IST class
23 members are individuals with a disability as defined in 42 U.S.C. § 12102 and have
24 met the essential eligibility requirements for the receipt of the services, programs,
25 or activities of the Defendants.

26 Defendants AHLIN who is head of the Department of State Hospitals in
27 charge of State Hospitals where VCSO sends IST detainees, including Patton and
28 Atascadero, and Oreol, who is the head of the Patton, implemented the “one in and

one out” policy that deprived IST detainees of timely restorative mental health treatment. Ahlin’s and OREOL’s failure to timely provide restorative and other mental health treatment to the IST detainees is based upon the ISTs' mental disabilities. In addition, the Defendants AHLIN and OREOL, by failing to timely provide restorative and other mental health treatment are causing a negative disparate impact on a class of mentally disabled persons by barring them from "meaningful access" to not only the public benefit of those services, but also barring their access to an adequate criminal defense and a speedy trial, as compared to non-IST detainees. These defendants violate Title II of the ADA through acquiescing and implementing placement policies such as the “one in one out” policy that has a disparate impact and intentionally discriminate against IST inmates compared to non-IST inmates by (a) depriving them of adequate mental treatment, and (b) through their actions and failure to act, depriving them of access to the courts, (c) prolonging their sentences by failing to provide immediate restorative services, and (d) depriving them of equal statutory pre-trial custody credits. Ahlin and Oreol have alternatives that they could and should have implemented to eliminate the violations of Title II of the ADA and the unconstitutional delays in treatment by implementing restorative treatment centers inside the jail, such as the pilot program at San Bernardino County Jail, ensuring appropriate IST detainees receive community based mental health treatment such as CONREP, eliminating the arbitrary one in one out policy so inmates who are ordered IST earlier do not have to wait longer than inmates from other Counties who do not have such a long waiting list to receive housing, supplying more beds on-site at existing facilities, hiring more mental health professionals to treat IST detainees at existing facilities, leasing existing lock down facilities that can easily and cheaply be converted to mental hospitals, and building more housing at

1 existing facilities. They can also reduce the waiting time by reducing the
2 bureaucratic hurdles for transfer such as reducing the paperwork required for
3 transfer in the 1370 packets so if an inmate is designated they can be transferred
4 right away instead of waiting for the compilation of unnecessary paperwork that
5 delays the transfer. If the paperwork for the 1370 packet is lost, not complete, or
6 delayed, Ahlin and Oreol have implemented policies that IST inmates cannot be
7 transferred until the paperwork is complete or there is a showing made as to the
8 reason the paperwork cannot be completed, resulting in the warehousing of IST
9 detainees without appropriate mental health treatment. In addition, ISTs who are
10 unlikely to be restored to competency are held for lengthy periods of time even
11 after a determination could be made that the detainee is unlikely to be restored to
12 competency. Such a finding would result in the detainee being released from DSH
13 and returned to Ventura County for further proceedings, such as the initiation of a
14 conservatorship. These actions and alternatives would result in more available
15 beds, which would therefore reduce ISTs wait times.

16
17 163. Congress enacted the ADA upon finding, among other things, that “society
18 has tended to isolate and segregate individuals with disabilities” and that such
19 forms of discrimination continue to be a “serious and pervasive social problem.”
20 42 U.S.C. §12101(a) (2).

21 164. In response to these findings, Congress explicitly stated that the purpose of
22 the ADA is to provide “a clear and comprehensive national mandate for the
23 elimination of discrimination against individuals with disabilities” and “clear,
24 strong, consistent, enforceable standards addressing discrimination against
25 individuals with disabilities.” 42 U.S.C. §12101(b) (1)-(2).

26 165. Title II of the ADA provides in pertinent part: “[N]o qualified individual
27 with a disability shall, by reason of such disability, be excluded from participation
28

1 in or be denied the benefits of the services, programs, or activities of a public
2 entity, or be subjected to discrimination by any such entity.” 42 U.S.C. §12132.

3 166. The ADA requires public entities to ensure that their programs, services and
4 activities are accessible to and useable by detainees and inmates with disabilities
5 and must provide reasonable accommodations and modifications so they can avail
6 themselves of these programs, services and activities.

7 167. At all times relevant to this action, the government entities DSH and Patton
8 were each a “public entity” within the meaning of Title II of the ADA and
9 provided a program, service or activity to the general public.

10 168. Title II of the ADA prohibits a public entity from discriminating against a
11 qualified individual with a disability on the basis of a disability. 42 U.S.C. §12132.

12 169. DSH and Patton, and Defendants AHLIN and OREOL are mandated to
13 operate each program, service, or activity “so that, when viewed in its entirety, it is
14 readily accessible to and useable by individuals with disabilities.” 28 C.F.R.
15 §35.150; see also 28 C.F.R. §§35.149 & 35.151. Defendants Ahlin and Oreol
16 continue to violate the ADA by maintaining inaccessible facilities that deny people
17 with disabilities access to programs, services and activities through the arbitrary
18 one in and one out policy, and the refusal to house Ventura IST detainees in
19 alternative ways as listed in paragraph 162, and failing to eliminate the
20 bureaucratic hurdles and unnecessary paperwork that further delays transfer of IST
21 detainees to facilities where they can receive appropriate mental health care to
22 restore their competency.

23 170. DSH and Patton, and Defendants AHLIN and Oreol have been personally
24 involved and personally acquiesced in the one in one out policy, and other
25 practices which have caused a disparate impact on IST detainees. They know their
26 policies and practices have resulted in the unconstitutional deprivation and Title II
27 violations resulting in denying IST inmates from Ventura unconstitutional mental
28

1 health treatment, but they have allowed the practices to be continued without
2 finding a solution that would solve the problem, their actions have intentionally
3 discriminated against IST inmates and excluded Plaintiffs and Class Members
4 from participation in the services, programs and activities of the DSH facilities to
5 restorative and other mental health treatment, and as such, have denied them the
6 rights and benefits accorded to other inmates, solely by reason of their mental
7 disabilities in violation of the ADA. In addition, the Defendants have violated the
8 ADA by failing or refusing to provide Plaintiffs with reasonable accommodations
9 and other services related to their disabilities. See generally 28 C.F.R. §35.130.

10 171. DSH and Patton, and Ahlin and Oreol, are further required under the
11 ADA's "integration mandate" to provide care in integrated environments for as
12 many disabled persons as is reasonably feasible. In order to comply with the
13 integration mandate, DSH and Patton, and Ahlin and Oreol, are required to make
14 "reasonable modifications in policies, practices, or procedures" that are "necessary
15 to avoid discrimination on the basis of disability." 42 U.S.C. §12132; 28 C.F.R.
16 §35.130(b)(7); See also *Townsend v. Quasim*, 328, F.3d 511, 515-518 (9th Cir.
17 2003); *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581, 592, 600-601, 119 S.Ct.
18 2176 (1999); *Arc of Washington State, Inc. v. Braddock*, 427 F.3d 615 (2005).

19 172. DSH and Patton, and Defendants Ahlin and Oreol, have failed to comply
20 with the ADA's "integration mandate" by limiting DSH mental health services to a
21 particular number of mentally disabled inmates. DSH and Patton, and Defendants
22 Ahlin and Oreol, have not and cannot demonstrate that either (1) that they have
23 made a comprehensive and effective state program to cope with the lack of
24 services for these mentally ill inmates; or (2) that the necessary modifications
25 would fundamentally alter the nature of the service, program, or activity to be
26 provided.
27
28

1 173. As a direct and proximate result of the aforementioned acts, Plaintiffs have
2 suffered, and continue to suffer unequal access to the courts, denial of equal
3 statutory pre-trial custody credits, pain, humiliation, hardship, anxiety, isolation,
4 and a worsening of their mental illnesses due to Defendants' failures to address
5 accommodations, modifications, services and access required for Plaintiffs'
6 disabilities.

7 174. DSH and Patton, and Defendants Ahlin and Oreol were personally involved
8 in the decisions that resulted in the disparate impact on Plaintiffs' class and acted
9 intentionally, with discriminatory animus and/or deliberate indifference to the rights
10 of Plaintiffs in that they have had notice of the problem of IST detainees
11 languishing in jail for years while awaiting a transfer to an appropriate mental
12 health facility (which DSH has the statutory responsibility to provide) for
13 restorative and other mental health treatment for years, yet they have done nothing
14 to solve the problem, regardless of their ability to do so.

15 175. Because Defendants' discriminatory conduct is ongoing, declaratory and
16 injunctive relief are appropriate remedies. Moreover, as a result of Defendants'
17 actions, Plaintiffs are suffering irreparable harm, and thus immediate relief is
18 appropriate.

19 176. Pursuant to 42 U.S.C. §12133, Plaintiffs are entitled to declaratory and
20 injunctive relief as well as reasonable attorneys' fees and costs incurred in bringing
21 this action.

22 **FOURTH CLAIM FOR RELIEF**
23 **Violation of Title III of the Americans with Disabilities**
24 **Act (42 U.S.C. §12132 *et seq.*) Against CFMG, Fithian, Adler**
25 **and Pollack**

26 177. Plaintiffs incorporate by reference each and every allegation contained in the
27 foregoing and following paragraphs, as though set forth herein *verbatim*.
28

1 178. Defendant CFMG is the jail medical treatment provider for Ventura County
2 jails pursuant to a contract with County of Ventura and VCSO, and as such, is a
3 public accommodation that owns, leases, leases to, or operates a professional office
4 of a health care provider, hospital, or other service establishment within the
5 meaning of 42 U.S.C. §12181(7)(F), and Title III of the ADA's implementing
6 regulations, 28 C.F.R. §36.104 *et seq.* Defendants Fithian, Adler and Pollack are
7 agents of CFMG, and implement the practices that violate the Title III ADA rights
8 of the Plaintiffs' class.

9 179. As set forth herein and above, Plaintiffs are all individuals with a disability
10 and covered by Title III of the ADA, 42 U.S.C. §§12102(1), 12182(b); 28 C.F.R.
11 §36.104.

12 180. As set forth in paragraph 39, Defendants CFMG, Fithian, Adler and Pollack
13 have administrative offices and clinics inside the VCPTDF where they violate
14 Plaintiffs' title III rights, and have violated the ADA by intentionally
15 discriminating against, or causing a disparate impact on, IST detainees in the
16 following ways:

17
18 By failing to provide adequate mental health treatment to mentally ill
19 inmates in the pre-trial detention facility as described herein and above, including
20 Plaintiffs and the IST detainee class members while they are incarcerated in the
21 Jails, Defendants CFMG, Fithian, Adler and Pollack violate Title III of the ADA,
22 42 U.S.C. §§12181-12189, by discriminating against individuals with disabilities
23 on the basis of disability, in the full and equal enjoyment of Defendant CFMG's
24 goods, services, facilities, privileges, advantages, or accommodations. 42 U.S.C.
25 §12182(a); 28 C.F.R., Part 36.

26 **FIFTH CLAIM FOR RELIEF**
27 **Section 504 of the Rehabilitation Act (29 U.S.C. §794 *et seq.*)**
28 **Against the Defendants Ahlin and Oreol**

1
2 181. Plaintiffs incorporate by reference each and every allegation contained in
3 the foregoing and following paragraphs, as though set forth herein *verbatim*.

4 182. Section 504 of the Rehabilitation Act of 1973 provides in pertinent part:
5 “[N]o otherwise qualified individual with a disability . . . shall, solely by reason of
6 her or his disability, be excluded from the participation in, be denied the benefits
7 of, or be subjected to discrimination under any program or activity receiving
8 federal financial assistance ...” 29 U.S.C. §794.

9 183. Each Plaintiff and Class Member is at all times relevant herein a qualified
10 individual with a disability within the meaning of the Rehabilitation Act because
11 they have a physical impairment that substantially limits one or more of their major
12 life activities. 29 U.S.C. §705(20) (B).

13 184. Plaintiffs and Class Members are otherwise qualified to participate in the
14 services, programs, or activities that are provided to inmates at Ventura County Jail
15 facilities. See 29 U.S.C. §794 (b).

16 185. Plaintiffs are informed and believe, and based thereon allege that at all
17 times relevant to this action DSH and Patton were recipients of federal funding
18 within the meaning of the Rehabilitation Act. At all times relevant to this action,
19 Ahlin was and is the Director of DSH and Oreol was and is the Executive Director
20 of Patton. They operate and direct DSH and Patton, which are recipients of federal
21 funds, and are required to reasonably accommodate inmates with disabilities in
22 their facilities, program activities, and services. The act further requires the
23 Defendants to modify their facilities, services, and programs as necessary to
24 accomplish this purpose.

25 186. DSH and Patton, and Defendants Ahlin and Oreol, implemented and
26 directed policies and practices, or personally acquiesced in such policies and
27 practices, such as the one in and one out policy, that had a discriminatory disparate
28 impact on Plaintiffs’ class, and was done with discriminatory animus and/or

1 deliberate indifferent to the rights of Plaintiffs, and failed to modify their facilities
2 and accommodate IST inmates with disabilities, in the following ways:

3 A. ISTs are held in county custody in violation of the California and Federal
4 Constitution and state statutes for indefinite and prolonged periods of times
5 without restorative mental health care or basic mental health treatment solely
6 due to their IST condition and due to the policies and practices of
7 Defendants Ahlin and Oreol through their one in and one out policy, and
8 failing to implement reasonable accommodation, such as timely placing IST
9 inmates in alternative housing, an in other ways as alleged in paragraph 162;

10 B. ISTs are discriminated against compared to non-IST inmates in housing as
11 they are held in isolation and not general population solely due to their IST
12 condition;

13 C. ISTs are discriminated against compared to non-IST inmates in conditions of
14 confinement as they are often punished solely due to their IST condition;

15 D. ISTs are discriminated against as compared to non-IST inmates as they do
16 not get the same visiting, phone call and commissary solely due to their IST
17 condition;

18 E. ISTs are discriminated against compared to non-IST inmates as they serve
19 longer sentences and are denied statutory pre-trial custody credits as they
20 languish indefinitely in their conditions of confinement, and,

21 F. ISTs were denied equal access to the Courts due to their indefinite and
22 prolonged custody without mental health care that denied them their speedy
23 trial rights under the Federal and State constitutions, and denied them equal
24 statutory pre-trial custody credits due to their indefinite, prolonged custody.

25 187. At all times relevant to this action, the government entity Defendants were
26 each a “public entity” that received federal funding for various programs and
27 therefore are liable under the Rehabilitation Act.

1 188. Through their acts and omissions described herein and above, DSH, Patton
2 and Defendants Ahlin and Oreol have violated the Rehabilitation Act by excluding
3 Plaintiffs from participation in, denying Plaintiffs the benefits of, and subjecting
4 Plaintiffs and Class Members to discrimination in the benefits and services
5 Defendants provide to the detainees and inmates without disabilities.

6 189. Plaintiffs are informed, believe, and based thereon allege that DSH, Patton
7 and Defendants Ahlin and Oreol, committed the acts and omissions alleged herein
8 with intent and/or reckless disregard of the rights of Plaintiffs and Class Members,
9 and by personally being involved in, aware of, and directing policies and practices
10 such as the arbitrary one in and one out policy that had a disparate impact on them.
11 It is also alleged that the defendants have violated the Act by providing
12 substandard accommodations or refusing to provide plaintiffs with reasonable
13 accommodations for their disabilities as alleged in paragraph 162.

14 190. Pursuant to the Rehabilitation Act's implementing regulations, specifically,
15 28 C.F.R. 42.521, DSH, Patton, and Defendants Ahlin and Oreol were required to
16 make any structural changes necessary to render the programs and activities in
17 providing constitutionally required, reasonable and timely restorative mental health
18 treatment to IST inmates. They have not done so for IST detainees ordered IST in
19 Ventura County, although they know there is a problem, and have acknowledged
20 the problem for years.

21 191. As a direct and proximate result of the aforementioned acts, Plaintiffs
22 suffered and continue to suffer humiliation, hardship, anxiety as well as
23 deteriorating physical and mental health conditions due to Defendants Ahlin and
24 Oreol's failures to address accommodations, modifications, services and access
25 required for their disabilities.

26 192. Plaintiffs and class members are entitled to damages as a result of the
27 foregoing violations according to proof.

1 193. Because Defendants Ahlin's and Oreol's discriminatory conduct is ongoing,
2 declaratory and injunctive relief are appropriate remedies. Moreover, as a result of
3 Defendants' actions, Plaintiffs and the class members are suffering irreparable
4 harm, and thus immediate relief is appropriate.

5 194. Pursuant to 29 U.S.C. §794(a) Plaintiffs are entitled to declaratory and
6 injunctive relief and to recover from Defendants the reasonable attorneys' fees and
7 costs incurred in bringing this action.

8 **SIXTH CLAIM FOR RELIEF**
9 ***California Civil Code §52.1 Interference with Exercise of***
10 ***Civil Rights Against Defendants Ahlin, Oreol, CFMG, Fithian,***
Adler and Pollack, and Does 1-10

11 195. Plaintiffs incorporate by reference each and every allegation contained in
12 the foregoing and following paragraphs, as though set forth herein *verbatim*.

13 196. As alleged above, the conduct of the Defendants Ahlin, Oreol, CFMG,
14 Fithian, Adler and Pollack, and Does as described herein violated *California Civil*
15 *Code §52.1*, in that they interfered with Plaintiffs' and Class Members' exercise
16 and enjoyment of their civil rights, by denying them access to timely restorative
17 treatment.

18 197. Plaintiffs do not seek damages against the State of California, only
19 injunctive relief as with the other Defendants.

20 198. Defendants engaged in coercive acts that separately and independently
21 interfered with or attempted to interfere with the rights of Plaintiffs and the
22 Plaintiff Class to receive timely and proper mental health treatment and, as a result,
23 held them in criminal custody when they were required to be held in civil detention
24 for treatment and additionally, as a result, caused them to be held in criminal
25 custody for a period of time longer than they otherwise would have. By doing so,
26 Defendants separately, through coercion, violated Plaintiffs' rights under Penal
27 Code §§1368-70 and other statutes described above, the ADA and the
28

1 Rehabilitation Act, and the Due Process clauses of the United States and California
2 Constitutions. The independent coercion resulting from the Bane Act, 52.1,
3 violation is based on the following coercive conduct by the defendants:

4 A. They are held in county custody in violation of the California and Federal
5 Constitution and state statutes for indefinite periods of times without
6 restorative mental health care or basic mental health treatment solely due to
7 their IST condition;

8 B. They are discriminated against compared to non-IST inmates in housing as
9 they are held in isolation and not general population solely due to their IST
10 condition;

11 C. They are discriminated against compared to non-IST inmates in conditions
12 of confinement as they are often punished solely due to their IST condition;

13 D. They are discriminated against as compared to non-IST inmates as they do
14 not get the same visiting, phone call and commissary solely due to their IST
15 condition;

16 E. They are discriminated against compared to non-IST inmates as they serve
17 longer sentences and lose jail credits as they languish indefinitely in their
18 conditions of confinement, and,

19 F. They were denied equal access to the Courts due to their indefinite and
20 prolonged custody without mental health care that denied them their speedy
21 trial rights under the Federal and State constitutions, and denied them equal
22 jail credits due to their indefinite, prolonged custody.

23 199. Plaintiffs are informed, believe, and based thereon allege that in engaging in
24 the conduct alleged herein, Defendants acted with deliberate indifference and the
25 intent to injure, vex, annoy and harass Plaintiffs, and subjected Plaintiffs to cruel
26 and unjust hardship in conscious disregard of Plaintiffs' rights with the intention of
27 causing Plaintiffs injury and depriving them of their constitutional rights.

1 200. As a result of the foregoing, Plaintiffs seek exemplary and punitive damages
2 against the private entity and individual Defendants.

3 201. As a direct and proximate cause of the aforementioned actions of
4 Defendants and Does, Plaintiffs were injured as set forth above, thereby entitling
5 Plaintiffs to damages against Defendants under Cal. Civil Code §52.1, including
6 but not limited to actual damages, exemplary damages, civil penalties, statutory
7 damages and attorney's fees.

8 **IX. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for relief as follows:

10 A. For certification of a class as defined above;

11 B. For a declaration that Defendants are depriving Class Members of
12 their due process rights pursuant to the Fourteenth Amendment to the United
13 States Constitution, the Americans with Disabilities Act; and the other
14 statutes alleged above.

15 C. For the issuance of preliminary and permanent injunctions restraining
16 Defendants from violating the Sixth and Fourteenth Amendments to the
17 United States Constitution and the Americans with Disabilities Act in the
18 confinement of individuals awaiting competency evaluation and/or
19 restoration treatment, and violating the other statutes alleged above,
20 including but not limited to:

- 21 1. An order requiring Defendants to provide prompt and adequate mental
22 health treatment to Class Members, to begin no more than 7 days from
23 the time of a court order for a mental competency evaluation, or, in a
24 reasonably and timely manner as required by the Constitution and
25 applicable statutes;

2. An order requiring proper training of mental health professionals to ensure that Class Members receive proper mental health care and treatment, including restorative treatment, in county custody;
3. An order that Class Members shall not improperly be placed in isolation or disciplined due to their mental conditions, and shall receive access to full programming, visitation and commissary while in county custody;
4. An order that, if the transfer from county custody to a State Mental Health Hospital as designated by DSH cannot be accommodated within 7 days of the Court order (or the constitutionally and statutorily reasonable time period as required by this Court) to transfer an inmate to State Mental Health Hospital for restorative mental health care treatment to restore competency, the Defendants either release the inmate, or find alternative custody where medications and restorative health care can commence;
5. An order that the DSH, Patton and Defendants Ahlin and Oreol, abolish the “one in one out policy”, and accept Class Members within 7 days of the court order (or the constitutionally or statutorily time period decided in this lawsuit) requiring transfer to a State Mental Health Hospital, and hire the staff and establish facilities so that Class Members can be transferred on a timely basis as required by the applicable statutes and federal and state constitutional provisions;
6. An order that the Defendants comply with all applicable time periods for various actions, including reporting requirements on Class Members, as required by State law; and,
7. An order that the Defendants comply with all federal and state laws, including the Penal Code, the Statutes cited above, and the State and

